



THE REMINISCENCES OF THE  
RIGHT HON. LORD O'BRIEN



THE REMINISCENCES  
OF THE RIGHT HON.  
LORD O'BRIEN

(OF KILFENORA)

LORD CHIEF JUSTICE OF IRELAND

EDITED BY HIS DAUGHTER

HON. GEORGINA O'BRIEN

WITH PORTRAIT

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EDWARD ARNOLD

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## INTRODUCTION

It is a matter of sincere regret to me that an *apologia* for inadequacy should preface this volume, which, as an autobiographical work, is incomplete and fragmentary. I acted as my father's amanuensis, and each evening used to bring him the manuscript, saying, "Shall we work a little to-night?" To which request, when we first undertook the book, he would assent. Alas! as the days passed by, the answer, "Not to-night, I am too tired," became more and more frequent, until at last there came an evening when he said: "You will have to complete the book alone, unaided by me; I can work no more. I have every confidence in you."

I had hoped that the writing of his reminiscences would provide him with an interesting pastime, instead of which it soon became evident that speaking of his early days saddened him. For one who had been so full of life and buoyancy, so vigorously alive, it was a sore trial to spend the days in an arm-chair, enfeebled by age and ill-health, conscious that the tide of life was slowly ebbing. Truly has Dante said:

"Nessun maggior dolore  
Che ricordarsi del tempo felice  
Nella miseria."

Very reluctantly, and with many misgivings as to my qualifications for the work, I took up my pen to finish what was to me a sorrowful task.

Many years before this book was begun I suggested to my father that he should begin an autobiography, but without success. He was indolent about writing, and invariably wrote the shortest of letters. I have heard it said that on the Bench he rarely made notes; he was able to pigeon-hole, as it were, the facts of a case in his brain, and I have been told that he never forgot any point whatsoever that had any bearing on it. Absolutely devoid of intellectual arrogance, he was ever willing to listen to the opinions of others, provided they were clearly and intelligently stated. Sometimes he would read the evidence in a case to a member of his family, and then ask an opinion on it, in order to ascertain the view which a non-legal mind would take of the evidence, so that he might fully understand the difficulties which would present themselves to a jury. One day he called me into his study and gave me a brief to read. When I had done so he asked: "Now, what is your view of the case?"

I gave him my view, which he seemed rather to deride, and asked me on what grounds I based my opinion. Feeling very small, I stated my reasons as best I could. He took a totally different view of the case.

"Now, might not the evidence be read in such a way?" he said, representing other views of the case.

“ I have given you my opinion, such as it is,” I replied.

He smiled, as he said: “ Well, I have been endeavouring to urge my views on you to make you see things in the same light as I do, but it is only fair to say that there is a great deal to be said in favour of your opinion. Judge —— takes exactly the same view as you do. I fear there’ll be a disagreement.”

A distinguished Judge thus wrote of him: “ He and I were thrown much together all through our professional careers, and nothing ever interrupted our mutual regard and attachment. It was a joy to be with him in a case, he was so undaunted, and so thoroughly master of all the resources of advocacy. As an antagonist there was no one whom I feared more. With unerring instinct, he always directed his powers against one’s most vulnerable point of defence. As a Judge, he displayed those great qualities which won for him his great position. Fearless, wise, strenuous to make justice and right prevail, and with extraordinary power of getting at the honesty of a case and penetrating false evidence, it is a comfort and satisfaction to have been comrade at the Bar with such a loyal friend, dauntless advocate, and admirable Judge.”

G. O’B.

LONDON,  
*October, 1916.*





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# THE REMINISCENCES OF THE RIGHT HON. LORD O'BRIEN

## CHAPTER I

EARLY RECOLLECTIONS—MY FATHER—THE FAMINE—RICHARD  
LALOR SHEIL—EDUCATION—SCHOOLDAYS

I THINK it is Smollett who says something to the effect that every person who has anything to say ought to write his own memoirs, provided he has honesty enough to tell the truth. Inasmuch as the truth is often extremely dull, I take up my pen, with many misgivings, to write my reminiscences.

I was born in the year 1842, on the 29th of June, at Carnelly House, in the county of Clare, where my family was then domiciled. My father, John O'Brien of Ballynalacken, County Clare, was a Whig and Member of Parliament for Limerick. He had, as we say in Ireland, a "long family." I was his fifth son.

He was a man of undoubted abilities and singularly broadminded, but cold and reserved in manner, and though he kept us, children, at a distance, we never doubted the affection he bore us. He might have left a mark on contemporary history had he not been of an extremely sensitive nature—shy and diffident.

He was a warm supporter of Catholic Emancipation and an intimate friend of the great O'Connell, to whom he bore a very remarkable likeness, and for whom he was frequently mistaken, a fact which sometimes gave rise to curious incidents. It is to my father's eternal credit that he was among the first Catholics of the educated classes to come forward in support of Catholic Emancipation, a right which, strange to say, the Catholic gentry of Ireland were very slow to claim.

I have now in my possession the (London) *Morning Chronicle* of the 15th of December in the year 1836 (price 5d.), giving an account of a meeting held in the Court House, Clare; my father was in the chair. At this meeting, held two years before the passing of the great Poor Law Act, resolutions in favour of Poor Laws for Ireland were unanimously adopted. At that time poverty and illness were rife in Ireland, and a great portion of the land was in the hands of absentee landlords. My father, speaking at this meeting, pointed out that "a well-regulated poor-rate would, in a degree, have the effect of an absentee tax, from which the resident landed proprietors would derive important advantages and be relieved from the painful sense of living in the midst of a famishing population. The physical and moral condition of the country would progressively improve, and the higher and more affluent ranks, whether resident or absentee, would be compelled, by the urgent sense of self interest, to superintend the wants and ameliorate the

condition of the humbler classes. It is apprehended," he said, "that a poor-rate may encroach upon rental, but whatever part is so applied will produce an abundant equivalent, and I know no more appropriate application of national rental than in protecting the great body of the people from periodical starvation." It would seem that my father foresaw the evils which were to accrue from absenteeism.

My first recollection, a melancholy one, impressed itself indelibly upon my mind, and comes before me as distinctly as if the incident took place only yesterday, and yet how many years have elapsed since then ! It must have been about the year 1847 or 1848, the years of the failure of the potato crop and the great famine known in Ireland as "The Great Hunger." The very atmosphere of the day comes before me—a dull grey day, with a low-hanging, leaden sky. I (a very small boy) was standing in a field with my father, who held me by the hand, and near by was a labourer digging potatoes. Each time he dug up a spade full of potatoes he scraped them free of clay, and, in silence, submitted them to my father's inspection. Consternation and despair were depicted on the man's countenance. Each potato was black and rotten at the core. I remember walking home with my father and thinking the while how grave he looked. The years 1847 and 1848 were, perhaps, the saddest years in the all-sad history of Ireland. People, especially in the west, died in hundreds from dysentery, the effects of starvation. Clare was devastated



by disease, misery, and desolation. The workhouses were overcrowded; it was impossible to provide accommodation for the starving, and on the road skeletons were to be seen. A child of my tender years was not permitted to see these harrowing sights; still, I perfectly recollect hearing them described.

My early recollections come back to me in a fragmentary manner. Some mere incidents stand out vividly in my memory, while events of importance or personages of distinction are totally forgotten, or but indistinctly remembered. As a small child, I sometimes met Richard Lalor Sheil, who was a connection of our family. I can just recall the vision of a man of dwarfish appearance, with very intelligent eyes which made his face attractive.

Sheil was a most agreeable companion. His oratorical powers were so great that they rivalled those of O'Connell; and were supposed to excel even those of Macaulay. My father attached much importance to oratory, and was no mean orator himself; indeed, Macaulay congratulated him in the House "on the force and eloquence" he displayed "when pleading the cause of his country." This occurred in 1844. Lord John Russell had moved for a committee of the whole House to take into consideration the state of Ireland. I think in those days more importance was attached to oratory in politics than at the present time. Nowadays one hears of good speakers or clever debaters, but rarely of great orators. I sometimes wonder if oratory is becoming a lost art, and fear that Mr. Gladstone and John Bright were the

last of the orators. How well I remember the well-known Serjeant Frank Murphy !\*—a brilliant and amusing conversationalist, the best of good company, a most entertaining raconteur, and much sought after in London on account of his many social gifts. We, children, delighted in his society, and would ask him about London and the notable people he had met there. He used to speak to us of “ Old Thack,” as he called Thackeray, who was a friend of his, although he never quite forgave him for his unflattering portrait of the Irish in the *Irish Sketch Book*. The Serjeant was a confirmed gourmet, and I recollect his telling us that he dined with Lord Byron, who, though priding himself on his cook, gave a very indifferent dinner. On Lord Byron asking him what he thought of the cook, he answered, with more frankness than politeness: “ Dam bad.”

My father was deeply interested in the education of his children, and was, as I have already said, rather severe. My three elder brothers were at school at Oscott, and, when he was not detained in London by Parliamentary duties, he used to superintend my studies. I had to present myself in the library each morning. It was with awe that I came into his presence. I was placed in the far corner of the room and made to read aloud from one of the Latin classics, generally Virgil, and woe to me when I stumbled

\* Serjeant-at-Law; a member of the English Bar; a writer of magazine articles; contributed to *Fraser's Magazine*, which was established by Maginn, and was under the auspices of Thackeray; M.P. for County Cork, 1837–1853.—EDITOR.

over or mispronounced a word ! I still hear his voice ringing in my ears, as he called out " Sir," or " Sirrah, what was that ?" Sometimes when the lessons were over, and I had acquitted myself well, he would converse with me, and tell me some story or incident by way of reward. I remember his telling me of an occurrence which made an impression on my mind. One dark, wild night when returning from the Clare Assizes (he was High Sheriff at the time), his carriage was suddenly stopped on a lonely road, and an individual thrust his head into the window saying that he desired to give himself up to justice, " for," he said, " I was among the six men who murdered Mr. So-and-so." He alluded to the murder of a gentleman, which had taken place many years before, and for which five men had been executed. The man then proceeded to say that he was present at the death scene of his companions, and the horror of that scene still haunted him. At his own most earnest wish he surrendered to justice, and, I believe, paid the extreme penalty of his crime. This is interesting only inasmuch as it shows that great criminals, haunted by the sense of their guilt, will, years after a crime has been committed, surrender to justice rather than bear the reproaches of conscience.

As a boy, I was very happy, and full of vitality. Most of my time was spent out of doors hunting hares or coursing. I was often in mischief, and numerous were the scrapes in which I was involved, from many of which my old nurse, Kelly, extracted me. She was a typical old-fashioned Irish servant, very faith-

ful and devoted to us. She was with us until she died, and was always *seventy-four* when the census came round, though she was much nearer ninety-four! When I wished to tease her, I used to say: "Come now, Nurse Kelly; what is your age?" at which question she immediately flew into a passion. Though she was devoted to us all, I think I was her favourite—perhaps because I gave her the most trouble. I have a vivid recollection of being confined to the lumber-room for some childish escapade, while the kind old woman sat outside the door with an enormous brown nursery teapot, trying to console me with saucers of tea, floating with cream, which she passed through the door.

One trait I share in common with the great Dr. Johnson, and that is my love of tea. As a child, it was a panacea for all my woes. When I was nine years of age my father talked of sending me to school, to join my brothers at Oscott. My father was something of a philanthropist, which often means spending more money than one can afford. He had built a schoolhouse, and had several roads made throughout Clare to give employment after the famine—an expensive form of philanthropy. In those days elections were a great expense, so that when I was of age to go to school the family exchequer had run rather low. It was decided at last that my brother William and I should go to Clongowes Wood College. I remember feeling very sad and desolate standing aloof in the playground, watching boys of my own age flying kites, which seemed to me an inane pas-

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time. At home we, children, were expected to take an intelligent interest in all that was going on, and were permitted to join in the conversation of our elders. The Jesuit Fathers, on perceiving my mental isolation, moved me into a class with boys older than myself. I soon overcame any feelings of home-sickness. Many pleasant memories flash back upon me when I think of those distant schooldays, my teachers, and my school companions. Father Lentaigue was Rector of Clongowes then, and among my class-fellows were several boys who afterwards rose to eminence. John Naish, one of my dearest friends throughout his life, was amongst them. He became Lord Chancellor of Ireland when little over forty years of age. Even as a small boy he was remarkable for exceptional ability; indeed, his intellect was towering, and his memory encyclopædic. His early death, in the full vigour of his glorious intellectual powers, was a great shock to his friends. Sir Nicholas O'Connor, afterwards Ambassador at St. Petersburg, and the distinguished scholar, Richard O'Shaughnessy, were class-fellows of mine, also Father Donovan, now a Jesuit. I worked very hard at school, and always held a good position in my class, being generally top of it.

In those pre-Intermediate days our studies were almost exclusively classical. Richard O'Shaughnessy and I were the leaders of the Rhetoric class. The rivalry between us became so intense that in the summer mornings, though still in bed, we would lie waiting with open shutters for the first streak of

examinations. After a close struggle, I carried off the examination prize. My conduct on the whole was good, although I was once the ringleader in a "barring out." One morning my class, headed by me, decided to have a "barring out." Properly speaking, it was the locking in of ourselves, and a "barring out" of the "prefects" and other undesirables. The great pleasure lay in kicking up a row, and in giving a display of pluck before the house. The time selected was the hour for the mathematical class.\* Mathematics had no charm for me, nor, indeed, for the majority of the class. A general strike was proclaimed, and there was a cry of "Down with mathematics!" and much cheering and uproarious defiance of law and order. The master invoked the aid of the "Higher Line Prefect," who summoned the rioters to open the door. Dead silence reigned among the boys, inasmuch as they were afraid lest their voices might be recognized, and we were in dire fear of the prefect. Once more

\* That distinguished Jesuit, Father Delany, when speaking of my father, told me the following little anecdote: "It became my duty," said Father Delany, "in July, 1858, to examine the second Mathematical Class of some fourteen students. The papers I had set were easy; but of the fourteen not more than three attempted to do the simplest proposition. The others handed in blank papers, except O'Brien. He, too, did not attempt any of the propositions, but wrote a really clever essay on the educational value of the study of mathematics *if only one had a taste for them*. This was characteristic of the boy. Mature beyond his years, he was very self-possessed, with the bump of reverence only moderately developed; but genial and pleasant, and ready of repartee."—EDITOR.

he summoned us to surrender. There was no response, whereupon he sent for the house carpenter, who knocked in the panel of the door with two or three sturdy blows. We had to capitulate, and had to walk out in single file, blessing our luck that nothing worse lay in store for us.

In my schooldays a favourite amusement of mine was known as "bringing out the hounds." This pastime usually took place in the General Study Room, when the boys were preparing their work for next day, and when silence was imperative. The Prefect of Discipline was near-sighted. One of my class-fellows used to start giving tongue like a fox-hound from one end of the study. I also gave tongue, and in a few minutes there was a capital reproduction of hounds in full cry. As no boy stirred from his seat, it was impossible for the Prefect of Discipline to distinguish those who gave tongue and those who did not.

I was the recipient of many prizes when at school, and in 1858 received the Clongowes Medal. I had a love for the Latin classics, and construed Latin and Greek verse very fairly. Though never a great reader, I delighted in Shakespeare's plays, and had a liking for poetry, especially for that of Byron. Sir Walter Scott was my favourite author, and is to this day. I shall never forget the pleasure with which I read "Ivanhoe." I know it is the fashion nowadays to decry the Waverley Novels as too romantic and *démodé*, but, surely, no other historical novel gives such a vivid and incomparable picture of the feudal

times. Though fully aware of my literary shortcomings, which I confessed to Mr. Arnold before commencing my autobiography, I maintain that there never was, and never will be, a novel to equal "Ivanhoe." I liked books which deal with adventures, and works that appeal to the imagination. I thoroughly enjoyed the writings of Dumas Père, and still remember being thrilled by Mrs. Radcliffe's "Mysteries of Udolpho," which I read as a schoolboy during my vacation. I sat up at night for hours reading it in solitude by the light of a solitary candle. Profound silence reigned around me—the silence of night—when, all of a sudden, I distinctly heard a noise in my room. There could be no mistake. Up to that moment I had never believed in ghosts, but then felt firmly convinced that I was about to see one. The noise came again, loud, and more insistent. I hardly dared look round, fearing some ghostly manifestation. The candle was guttering and flickering before I summoned courage to turn my head. I glanced around the room, but there was nothing unusual to be seen; still the sound came apparently from the direction of the mantelpiece. It was so loud that I seized the candle, and, going to the place whence it proceeded, heard a croak. In another moment a huge jackdaw flopped down the chimney from its nest at the top. It was much bewildered and surprised by its strange surroundings, and was, apparently, as frightened as I had been before its advent. I suppose it would be an Irish bull to say that this was my one encounter with a ghost.



## CHAPTER II

TRINITY COLLEGE—CALLED TO THE BAR—HARRIERS—MY  
FIRST PUNCHESTOWN—MY FIRST CASE

IN 1855 I was shocked by the sudden news of my father's death. The day before, in his usual health and good spirits, he had started for London on Parliamentary duty. When he reached Dublin he had some sort of seizure from which he never rallied. He died at the Shelbourne Hotel.

After his death my mother moved to Dublin with us. My two eldest brothers were grown up at the time. I entered Trinity College with the view of being called to the Bar. My career at College was not, I regret to say, a very distinguished one, nor was I conspicuous as a strenuous worker. I had rooms in that section of the College known as Botany Bay, where, I believe, I gave very pleasant parties. I remember one especially, a musical party. My dear friend M—— (now a saint, and one of London's most distinguished preachers, then a gay young man about town), having dined not wisely but too well, took possession of the piano and strummed upon it until we could stand it no longer. He fancied himself as

a musician in those days, and I believe he is still musical. When we asked him to abstain from playing, he determinedly sat upon the instrument; and it was with great difficulty that we were at last able to evict him.

When I was at Trinity, Dr. Salmon was Lecturer in Mathematics. Years afterwards he was Provost. He was most gifted, but his abnormal absent-mindedness gave rise to many good stories at his expense. I remember being told that on one occasion when he was out walking, he knocked against a cow on its way to the butcher. Deeply absorbed in some intellectual problem, he took the cow to be a passer-by, and, taking off his hat, apologized to it most elaborately, and then walked on.

On another occasion, when the Provost had gone to a dinner-party, his faithful servant was horrified to find his master's trousers on the bed. "Gracious goodness!" thought he; "my master has gone to a party without his trousers." The man seized the garment, and rushed into the street, where he overtook the Provost, looking quite spick-and-span and almost fashionable in a new pair of trousers!

At Trinity Canon Teignmouth Shore was one of my grinders. Only a few years ago I chanced to meet him again, and spent a pleasant day with him at Worcester, where he showed me over his beloved Cathedral. When I left Trinity College I had had an auction of all my things, and went to London to

“eat my dinners.” In London I spent money nobly—in fact, so munificently that I was soon penniless, and probably would have been there to this day had I not possessed a valuable edition of Johnson’s dictionary, which I sold. The money it realized helped to pay my return fare to Ireland.

Dublin was very gay in those days. My sisters and I went to balls, dances, and parties at the Castle, but I was obliged to retire from Court life owing to the loss of my Court suit. It had belonged to my eldest brother, then to my second and third, and eventually was handed down to me rather the worse for wear. It disappeared, having been stolen by a servant. Its loss necessitated my withdrawal from Viceregal circles for a time. Some years after its disappearance, as I was walking down Dame Street, when a levée was being held at the Castle, a rickety cab collapsed just in front of me, and a gentleman in a full Court suit was deposited on the pavement bruised and looking very doleful. I condoled with him on his accident, and, as I did so, was surprised to perceive that he was wearing my *ci-devant* Court suit. In the course of conversation I asked him what tailor had been responsible for his suit. He told me that he had bought it from a servant-man, who said that it was given to him by his former master, who had no further use for it. There could be no mistake about the suit, as I recognized certain well-known patches.

I was called to the Bar in 1865. I read with that

great Judge and lawyer, Chief Baron Palles,\* to whom I always say I am indebted for any knowledge of law I possess. For six months after I was called to the Bar I gave no attention to work; not that I was lazy or an idler, but I was fond of pleasure and energetic in its pursuit. In those days I had a passion for hunting which much interfered with my work. It was far pleasanter to be at my brother's place in Clare, enjoying the fresh breezes from the Atlantic, than to be in a stuffy court-house, hanging about on the look-out for chance clients, or listening to other people's cases. I had a scratch pack of harriers, the keep of which cost me nothing—they were boarded out amongst the tenantry; and I possessed a horse called Chance, the most trusty of hunters. The whole country-side was wont to come out hunting with me, even the schoolmaster left books and pupils to join the chase. He was an excellent sportsman; I only hope he was an equally good educationist. Perhaps in those days school inspectors were less scrupulous, or less keen, than now; anyhow, we were never troubled by informal visits from them. We were a

\* The Lord Chief Baron always regarded my father as a youth, and never forgot that he had been his mentor, when, as a young barrister, he had read law with him.

One day they sat together during the hearing of an important case. A controversy on some point of law arose, on which the opinion of the Lord Chief Justice, who was presiding, differed from that of the Lord Chief Baron, and the latter was heard to exclaim, as though he were speaking to a recalcitrant schoolboy: "Oh, Peter, Peter, you never learned that from me."—EDITOR.

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merry party, and the hillside rang with the sound of my hunting-horn. I used to impress upon the keeper, Tom Gardiner, then some years older than myself, the necessity of preserving hares, now I threaten to put him in jail should the hares fail. I am happy to say Tom is still alive, and only the other day he sent me a message to say that he had "plenty of hares for me; would I come and hunt them?" Alas! my hunting days are over, and for me "there has faded a glory from the earth." Tom Gardiner is endowed with all the vivid imagination of the Celt, and is the most entertaining of story-tellers. With what delight Lady Gregory and Mr. Yeats would have listened to him! Tom was intimately acquainted with the fairies, and had seen mermaids with emerald-coloured eyes and long hair, for "all the world like say-weed," who had endeavoured to put a "spell on" him and draw him under the waves in spite of himself; but Tom was obdurate to all blandishments, and was not to be cajoled even by "the Queen of the Mermaids herself," who, he gave me to understand, had endeavoured to fascinate him. He took no little pride in having resisted her baneful influence. We all delighted in his stories, and this the rogue knew. As I write, I seem to see his shrewd Irish eyes fixed on my face, observing me closely, as he related some of his thrilling experiences most dramatically, wondering, I suppose, how far I was gullible. So vivid were his descriptions of "witch hares" and strange foxes, that, when I was listening to him, I am not

certain that I myself did not believe in magic and fairies.

How happy I was in Clare, and how I loved the wild Burren country, and the thunderous sound of the Atlantic, as the waves rolled against the cliffs ! I recollect one most exciting hunt, when a hare, having given us quite a brisk run, made for the cliffs of Moher, and, closely pursued by the hounds, bounded into the Atlantic. It was with great difficulty I managed to call off my hounds. On another occasion my horse, Chance, floundered into a bog, and, but that he extricated himself by what seemed nothing short of a miracle, the Queen's Bench would never have known me.

How well I remember my first Punchestown, which took place not long after I had been called to the Bar ! I had made no arrangements to go, and, all of a sudden, on the very morning of the races, it flashed upon me that they were to take place that day. I wanted very much to go, as did my friend, Sam Walker, afterwards Lord Chancellor of Ireland. John Naish also expressed willingness to accompany us. But how were we to get to Punchestown ? That was the question. Special trains did not run so frequently in those days, and they were all gone before we bethought ourselves of the races. All the jarvey cars had either started or were bespoken. We betook ourselves to a livery stable, where we endeavoured to secure a conveyance. Everything on wheels seemed to be *en route* to Punchestown.

The only vehicle on the premises was a hearse, but we were not to be beaten, and hired it. We were joined by another friend, whom I did not meet again until he had become a Field-Marshal, many, many years afterwards. Drawn by two long-tailed, funereal, doleful animals, we drove on to the course, where we were applauded by the crowd. Perhaps those sorry-looking steeds would have presented a more spanking appearance had they known that, of the four occupants of the hearse, two would become Lord Chancellors, another would one day be a Field-Marshal, and the other a Chief Justice ! I believe I won a little money on the races, which I think I deserved, having surmounted so many difficulties to get to the meeting. My sporting proclivities were viewed by my family with dismay; they feared I should never work, and, indeed, I might never have done so, had I not met my wife, to whom I owe all my success in life. When I proposed to her, she accepted me upon the condition that I should set to work, and when I was getting into practice, we arranged that we were to marry. I now applied myself to my profession, attended Quarter Sessions, and hung around the assize court, hoping to get briefed. Life is a hard struggle for a young barrister, and especially hard for those who have no connection among solicitors. Many of my fellow-barristers were sons of wealthy solicitors, who took care that their sons should be well provided with briefs.

I had joined the Munster circuit. One day my

opportunity came at the Cork Assizes, over which Judge Fitzgerald, afterwards Lord Fitzgerald, was presiding. A soldier was being tried for some offence, and the counsel for the defence had been taken ill, if I remember rightly; at any rate, he failed to put in an appearance. "Is there no one here to defend the prisoner?" asked the Judge; and then his glance fell on me, and he said: "Mr. O'Brien, will you undertake this man's defence?" I gave a nervous, but delighted, assent, rose to my feet, overwhelmed with confusion, and when I began to address the jury, in my embarrassment I did so from the back benches of the court. Loud tittering brought me to myself, and I stumbled into my proper place. Once fairly started, I lost my self-consciousness, and must have acquitted myself well, for when the case had concluded, Judge Fitzgerald congratulated me in the most flattering terms on the manner in which I had conducted the defence. From that day I steadily got into practice.



## CHAPTER III

EARLY STRUGGLES—A BREACH OF PROMISE—ISAAC BUTT—  
JUDGE KEOGH—THE MUNSTER CIRCUIT

SHORTLY after I was called to the Bar I was appointed registrar to my uncle, James O'Brien, one of the Judges in the Court of Queen's Bench. He was often confused with the late Judge William O'Brien, though they were not even remotely related. After my father's death my uncle represented Limerick in Parliament until he was raised to the Bench. I did not, however, remain his registrar for any length of time, as I found the duties attached to the registrarship interfered with my professional work. When I had been at the Bar for about four years I married, with little to begin married life upon, save courage and an invincible optimism. I worked valiantly, rising at six o'clock in the morning, and getting through much work before breakfast. All my life I have found the morning the best time for work, though, of course, I have had frequently to sit up late in consultation. How delighted I was in those days to make a few guineas on a brief! These small fees gave me far greater pleasure than the large sums I afterwards received, when success was achieved. I think most young barristers experience great plea-

sure when they receive their first fees (however small), the result of their brain-work.

I remember that one of my early successes was in a breach-of-promise case. A farmer's daughter had been badly treated by a man, who, having been engaged to her for a considerable number of years, jilted her in the most heartless manner. The girl whom he had so cruelly forsaken had been engaged to him in her early girlhood, and was at the time of the action past her *première jeunesse*; nevertheless, she was of very prepossessing appearance. She seemed to feel her position keenly. I thought that her good looks would be likely to make a favourable impression on judge and jury, and told her solicitor to advise her to dress nicely on the day she gave her evidence, which he promised to do. To my dismay, my client appeared in court next day befeathered, with touzled hair, and dressed in an exaggeration of the prevailing fashion. All the colours of the rainbow seemed to have merged themselves upon her person. "Gracious Heaven!" I whispered to her solicitor, "bring her out of court and get her to alter her appearance as much as possible. Bid her wash the powder off her face; remember she is broken-hearted!" The solicitor acted on my suggestion, the lady left court for a few minutes, and returned less flamboyant in appearance. In stating the case to the jury I expatiated on the cruel conduct of a man, capable of throwing over a girl whose best years had been consecrated to him, and for whom life had no longer any

attractions. My address drew tears from some of the jurors, and I actually succeeded in getting the damages asked for, a very large sum.

During my early days at the Bar I was counsel in several cases with Isaac Butt as my leader. He was most eloquent, and I found him most likeable, as did everybody with whom he came in contact. I was with him in one of his last cases. Poor man! How weak and ill he was—almost in a state of collapse as he tried to struggle on with his work! It was said that Butt died of a broken heart. I do not know whether this was really the case, but doubtless worry and anxiety hastened his end. Butt, the most disinterested of men, was deposed for Parnell, and died, as did Parnell, forsaken by his party.

I recollect hearing a story in connection with a dinner-party at Butt's house, at which a number of people were dining, amongst others, David Plunkett, now Lord Rathmore. There was also a man who shall be nameless, and whom I shall call Y——. Butt rarely drank whisky, but would sometimes take a glass of gin in preference. Y——, having put some whisky into his glass, proceeded to add from a decanter what he took to be water, but which was gin. Having nearly filled his tumbler, he drank it off with the result that, ere the lapse of many minutes, he was speechless. After a time he recovered his senses, and, turning to Butt, said: "What splendid whisky you have, Butt! Never did I taste its equal."

Judge Keogh, one of the cleverest men that ever

sat upon the Irish Bench, was of somewhat arbitrary temper. Once he and I had a passage of arms.\*

\* I am indebted to an eyewitness, the Rev. Mr. Pearson, for an interesting account of the scene, which he describes thus: "Late in the day Judge Keogh was charging the jury: the court was crowded with all the leading citizens of Cork, and excitement ran very high. Judge Keogh was giving the jury a definition of the law of conspiracy, when Mr. O'Brien stood up and said: 'Respectfully, my lord, I would ask your lordship to put it this way to the jury,' mentioning another legal definition. Judge Keogh turned round angrily and said: 'Mr. O'Brien, resume your seat, and if you stand up again I shall have you removed from court.' (I may say Mr. O'Brien had not previously said a word during the Judge's charge.) Mr. O'Brien did resume his seat, and waited until the Judge had finished his charge and the jury had retired; he then said: 'My lord, when your lordship was defining the law of conspiracy, in the excitement of the moment I rose to suggest an alternative definition; I did so most respectfully. Doubtless I was a little irregular in not waiting until the jury had retired, but your lordship said if I did not resume my seat, you would have me removed from court.' Judge Keogh: 'Yes, certainly.' Mr. O'Brien: 'Well my lord, on behalf of the Munster Bar, I strongly protest against such language being addressed to any member. If such language can be used by the Bench, we may say farewell to the freedom of the Bar.'

"The hour being then about 7 p.m., the Judge said he would go to dinner and return at 9 o'clock, to take the verdict of the jury.

"I came back rather early, and was fortunate enough to get my old seat directly behind Mr. O'Brien; sitting next to him was the late Mr. Justice Wright. When 9 o'clock came, the court was so crowded that we all felt certain Judge Keogh would be in a towering rage and have us all removed this time. There seemed to be no check (as indeed there was not) on the crowd coming in and filling up every passage. 9.30 came and 10 o'clock, and still no Judge. It was fully 10.30 when he came on the Bench, and the Sheriff started to call out the jury. 'Wait a

The encounter occurred at the Cork Assizes as far back as the year 1877. A man named Humphreys, who had held the position of City Treasurer, was accused of having formed a conspiracy to defraud the late Sir John Arnott, whom he had joined in a business transaction. The whole issue of the case depended on the jury having a clear understanding as to what constituted a conspiracy. I had argued that one person could not form a conspiracy, and that there was no evidence to show that the accused had conspired with any *named* person. When Judge Keogh was giving a definition of the law of conspiracy, I rose and said: "Respectfully, my lord, I ask you to put it in this way," and proceeded to briefly outline the law of conspiracy. Keogh grew heated, and threatened to have me removed from court if I did not sit down. When he had finished speaking, I rose and said: "My lord, you threatened to have me removed. If such language can be used from the Bench, then farewell to the independence of the Irish Bar."

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moment,' said Judge Keogh, and then turning to Mr. O'Brien, he said: 'Mr. O'Brien, I said something to you this evening which I regret, and you resented, very properly. I fully withdraw it; that statement was made in the presence of a crowded court, and so I sent word that the doors of the court should be open, so that as many might be present while I withdraw those words as were here when I uttered them.' And then, for the first time, I should say, in his experience as a Judge, he was cheered to the echo. But the cheering was even greater when the popular Peter O'Brien (the name we all loved to call him by) rose to make a suitable acknowledgment."—EDITOR.

During the remainder of the day the incident weighed heavily on my mind. I had a personal regard for Judge Keogh, and was also fully conscious of the fact that it was a serious matter for a junior barrister to speak as I had done. The court sat very late that night. Before it rose Keogh, who was a big man, sent for me. "Mr. O'Brien," he said, "I must apologize to you. I was wrong in using the threat that I did."

There and then in open court he made an *amende honorable*, which did him infinite credit. Ever after this encounter he was most friendly to me.

Rumour had it that Keogh was hard up. This was probably untrue, although his hospitality was proverbial.

On one occasion when Keogh was dining with Lord Fitzgerald, one of the host's little daughters made her appearance at dessert, and was told by her father to shake hands with Judge Keogh. To the surprise of all present, the child resolutely refused to do as she was bidden, and put her hands behind her back. "Why won't you shake hands with me, my dear?" Keogh asked. "Because I heard papa say that you are always pulling the devil by the tail," the *enfant terrible* replied!

I have many pleasant recollections in connection with the Munster circuit—recollections of good stories and good company. Tom de Moleyns, subsequently a County Court Judge, was at one time father of the Munster Bar. His was a charming personality. He

enjoyed an immense and deserved popularity, was courteous and affable, and possessed a fund of anecdote.

I remember de Moleyns telling me that journeying in France he found himself in a railway-carriage with a very beautiful young girl, accompanied by a nun who was evidently acting as duenna. De Moleyns, who was much struck by the young lady's appearance, cudgelled his brains as to how to get into conversation with her. At last an opportunity arose. The nun endeavoured ineffectually to open a window of the carriage. De Moleyns eagerly proffered his assistance. The nun thanked him in broken English. The wily de Moleyns drew himself up indignantly, and said in his best French that he was not English, but *Irlandais*. "*Irlandais et Catholique !*" exclaimed the nun delightedly. De Moleyns, who was not "*Catholique*," and was like St. Paul in being all things to all men, did not consider it necessary to make a confession of faith at that moment. The ice once broken, the long journey was very pleasantly beguiled for him by the conversation of the two charming ladies.

Very different from the courteous de Moleyns, but an excellent fellow also, and a member of my circuit, was Daniel O'Riordan, generally known as the Conveyancer, because at one time of his life he was the driver of a car between Macroom and Cork. Such is the republican spirit of the Bar !

O'Riordan was a most enthusiastic card-player, and

after the Bar mess it was his custom to indulge in a game of whist. He had a luxuriant growth of curly hair, and one night, when intent on the game, leant so close to the candles on the card-table that in one second his hyacinthine locks had caught fire. The other players were appalled, but not so my friend O'Riordan, who, not in the least perturbed, pressed his hand to his hair and extinguished the flame, saying, at the same time: "Never mind the conflagration, boys; go on with the game."



## CHAPTER IV

### I CONTEST CLARE—THE QUEEN V. PARNELL

ON the death of Sir Colman O'Loughlen in 1879, I contested Clare in the Liberal interest. The other candidates were The O'Gorman Mahon and Captain Hector Vandeleur, whose father, Colonel Vandeleur, of Kilrush, a Conservative, had represented the county for many years. The veteran O'Gorman Mahon came forward as a Home Ruler. Though he lived almost entirely abroad, he was, nevertheless, popular in the county, inasmuch as he had many years before supported O'Connell when he contested Clare. The *Freeman's Journal* (the Home Rule organ), when referring to the impending election, published the following passage: "The nomination for Clare took place yesterday. The three candidates proposed and received by the Sheriff are—The O'Gorman Mahon, Captain Hector Vandeleur, and Mr. Peter O'Brien. They are all equal in one respect—they are all Clare men. The first-named is a veteran, better known in Paris than in London, yet popular on his native heath. The name of O'Brien it is unnecessary to do more than mention in Clare. Connected with all the glories of the country, it is particularly knit into the everyday life of the county of its birth and its dwelling-

place. Mr. O'Brien is in favour of 'Tenant Right and Catholic Education Right.' " The article went on to predict that, were I to declare myself in favour of Home Rule, I would have a great chance of success. At a meeting held at Kilfenora, many declared themselves personally favourable to me, and at this meeting it was suggested that I should be given time to alter ("amend" was the word used) that portion of my address which dealt with Home Rule. My address remained unchanged, and, at the close of the Poll, The O'Gorman Mahon stood at the top by a substantial majority.

I took silk in 1880. The same year a State prosecution was commenced against Mr. Parnell and others, the charge being one of seditious conspiracy. I was entrusted with the defence of Mr. T. D. Sullivan (proprietor of *The Nation*). Mr. Sullivan had always been a man of letters, and not until the year 1879 had he ever appeared upon a public platform. During this trial, known as the Queen v. Parnell, I met Mr. Parnell in consultation, and suggested to him that the Roman Catholic Bishops should be called upon to give evidence, as many of them had supported him, either by their presence at meetings or by letters. But Parnell, who, even in those days, had little affection towards the Catholic Church (the action of the Irish Bishops after the divorce decree effectually split up his party), said: "Don't produce the Bishops; they would hedge"; and again emphatically repeated: "Don't produce them; they would be sure

to hedge." The State trial extended over a lengthy period. At first it excited much interest, and the court was crowded to suffocation, but after a while people wearied of it. The evidence was nearly all documentary; speeches were read and reread over and over again. Conspiracy is a loosely-defined offence, and it is difficult to define what constitutes it. This I pointed out to the jury, and told them that some think because a man uses an expression here, identical with an expression used by another man there, that that constitutes conspiracy, but that conspiracy was not coincidence of opinion. Alluding to the many speeches read in court, I said that all these speeches clearly showed a diversity of opinion, and revolved in one giddy throng of heterogeneous confusion and contradiction. I submitted that, therefore, the traversers could not be found guilty unless the jury was satisfied that there was an agreement between two or more of them. On the twentieth day of the State trial of the *Queen v. Parnell*, the foreman of the jury announced the result in these words: "We are unanimously of the opinion that we cannot agree"; and thus the trial ended.

## CHAPTER V

### THE LAND LEAGUE—MOONLIGHTERS

THE year 1880 was a bad year for Ireland. Great poverty and misery prevailed, as there had been three bad harvests in succession, and in 1879 the Land League was formed. At first the League attacked the land system, not the landlords, but, after a while, it outstepped the bounds of constitutional agitation, and sporadic outbreaks of agrarian crimes of the most revolting nature took place. Landlords or their agents were shot from behind hedges, and at night armed men raided the country. It was found all but impossible to bring the perpetrators of such crimes to justice. Witnesses were afraid to come forward, jurors were intimidated by threatening letters, and often would not convict—a very serious state of affairs—perhaps the very worst evil that can befall a country, inasmuch as our civil rights and our criminal liabilities are dependent upon the fairness of the common jury. When concluding the Munster Assizes in the year 1880, Judge Fitzgerald assembled the Grand Jury, and told them that he felt much disheartened by the many failures of justice he had witnessed during the Assizes. This he attributed to external influences operating upon some of the com-

mon jurors, and preventing them from performing their duties. Even during the Assizes, while the law was being administered, there was no cessation of crime. The Judge himself received many threatening letters, written in the hope of intimidating him. One of these, exceptionally vindictive in tone, he read from the Bench. The writer swore that worms would have their Christmas dinner off the Judge's bones if he attempted to bring convictions against certain prisoners. Judge Fitzgerald, of course, treated these letters with the contempt they merited.

The close of the year 1881 saw me Junior Crown Prosecutor for Green Street, and in 1883 I was appointed Senior Crown Prosecutor. By that time crime had enormously increased in the South of Ireland, and at the Winter Assizes the criminal calendar was so heavy that the Assizes did not conclude until about the middle of January. County Cork especially was in a very disturbed state.

A band of ruffians, with "Captain Moonlight" at their head, raided the country almost nightly, making many attacks upon farm-houses, maiming cattle and committing many atrocities. The marauders disguised themselves by blackening their faces and wearing false whiskers. A man named Connell was at last arrested in connection with these midnight raids; he immediately turned approver, saying that he had informed because he thought the police would not have arrested him had not one of his gang given information. On the person of Connell,

when searched, many incriminating documents were found, appointing raids by "regimental order of Captain Moonlight." I prosecuted in the case of Jeremiah and James Twohey, indicted, among other charges, for having broken into the house of a Mrs. FitzGerald, an old widow, who lived at the foot of Mushera Mountain. Her husband had died after a previous outrage. Connell, who proved to be no less a personage than Captain Moonlight himself, appeared in the witness-box to give evidence for the Crown. I said, in my address to the jury, "How often have we seen in the history of Ireland approvers come forward to expose a confederacy in which they themselves were steeped to the very lips, and how often have men been convicted on their evidence! The evidence of such men ought to speak with trumpet tone to those unhappy people who form criminal confederacies. Such was the nature of the confederacies that there was no security for criminals, for the man who is a criminal to-day may be an approver to-morrow."

Concerning the evidence of approvers, the Judge points out to the jury that such evidence should be corroborated. In the case of the Twoheys a dog was, if I may use the term in reference to an animal, the principal witness for the Crown. Mrs. FitzGerald became terrified on seeing a band of armed men invade her house, and failed to identify the invaders. She was struck on the head and was bleeding from the wound: her daughters, who were roughly handled, were also terrified by the appalling scene, and failed

to identify any of the miscreants, who were all disguised, save the Twoheys. A servant in Mrs. FitzGerald's employment said in his evidence that the Twoheys took an active part in the attack. When the raiders had left Mrs. FitzGerald's house, a strange dog was found about the place, and this dog, "Sam," was proved to belong to James Twohey. Connell said that the dog had followed the Moonlighters to Mrs. FitzGerald's house on the night of the attack, and that it was accidentally left behind. It was brought to the police-station, where it remained for some days, but no one came to claim it. Mr. Starkie, subinspector, and the late Captain Plunket\* ascertained to whom the dog belonged. It was put into a bag and taken near the house of the Twoheys, where it was set free. Captain Plunket and Mr. Starkie watched; the dog made straight for the house. Old Mrs. Twohey affected not to recognize it, as did her son James, though it manifested much joy at seeing them, wagging its tail and putting back its ears. When the police tried to remove it from the Twoheys, it would not leave; it evidently thought there was no place like home.

Ammunition was found concealed on the premises, as were also false whiskers, wigs, and various disguises belonging to the Moonlighters. The dog, a most intelligent animal, was produced in court. The jury found the prisoners guilty, and each was sentenced to seven years' penal servitude.

\* The Hon. Thomas Plunkett, Resident Magistrate for Cork.  
—EDITOR.





was standing only a few yards from the spot where the occurrence took place, speaking to a Mrs. Brosnan, who stated that when she saw the men she felt "queer and frightful," and immediately apprised Mrs. Brown that two strangers were on Brown's farm. Mrs. Brown was not alarmed, and remarked that they were probably men coming from a funeral; but, not seeing her husband working in the fields, she went to look for him, and found him dead, a bullet having penetrated his brain. When in jail awaiting his trial, Poff made a statement to the effect that on the day of the murder, he, Barrett, and a man named Dunleary, went into the haggard of Patrick Fitzgerald, and while there Dunleary said it was a bad place to be, for Brown was to be shot there that day. The men to whom the terrible announcement was made never went to give a word of warning to save the unfortunate man's life. As is usual in Ireland in most of these criminal cases, it was said that the murder was committed by "strangers." It was very difficult to procure evidence for the Crown owing to an appalling state of demoralization. It was of paramount importance that the assassins of Brown should be brought to justice if the interests of justice were to be safeguarded.

One of the lads who had witnessed the murder, said he could not recognize the assassins, as they were muffled and wore long cloaks, and in cross-examination it transpired that he was a relative of one of the accused men.

Mrs. Brosnan made a remarkable statement to the effect that though she had cautioned Brown to be careful of himself, as she had seen Barrett watching his movements, she gave no information to the police. On the day of the murder she had met Poff and Barrett in the vicinity of Brown's farm. At the inquest on Brown she denied having seen them. In the meantime she said that she went to confession, and confessed to have made a false statement at the inquest. The priest told her that she could not again swear what was false, so in the trial she told the truth. The prisoners were very ably defended, but the Crown evidence against them was strong.

In my reply on behalf of the Crown, I said: "The facts of the case are too unrelenting and too implacable even for the eloquence and the energy of counsel for the defence, who said that there is nothing in the antecedents of the prisoners to induce the jury to believe that they would commit so foul a crime. The Crown could not have given any evidence as to their antecedents or character—by the rule of law they are precluded from doing so—but the prisoners' counsel (not at the expense of the prisoners, but at the expense of the Crown) could, under the rules of the Winter Assizes procedure, have called any men they liked, priests and doctors who were in court, and have asked them what is the character of these men, whose lives are trembling in the balance. Notwithstanding that it was the privilege of my learned friends to procure evidence as to the char-

acter of the men, none was produced, perhaps in the exercise of a very wise discretion. What character did the prisoners give of themselves? Upon their own showing, what did they know and what did they abstain from doing? They knew that Brown was to be shot; they saw him in Scartaglin that day; they walked by Mrs. Brosnan's house and close to the house of Mrs. Brown, and they did not tell her a word—the wife, the widow! They saw Brown in Scartaglin, and they gave him no intimation of his coming doom; and these are the men in whose antecedents there is nothing to lead the jury to believe that they are anything but respectable? Again, I invite the attention of the jury to the account which the prisoners gave of themselves. What brought them to Fitzgerald's house that day?" In dealing with the suggestion that strangers had committed the crime, I pointed out that in Limerick, whenever a murder was committed, the murderers came from New Pallas; in Clare, when a murder was committed, they came over the Broadford hills from Tipperary; and when a murder was committed in Kerry, the murderers came from Castleisland! "And," I added, "I am surprised that in this case counsel did not describe them as some meteoric visitants dropping from the moon! What brought the prisoners to Pat Fitzgerald's that morning?" Having then reviewed the evidence, I wound up by saying: "If you have any doubt, as reasonable men, let the prisoners go free; but, if you have no reasonable

doubt, then do your duty. Let not the assassins of Thomas Brown go scot-free back to Castleisland to what, we submit, is the scene of their slaughter and their crime. The blood of the victim, the tears of the widow, the wail of the orphans, appeal to you; your country and your God appeal to you; the principles of our common Christianity appeal to you, to smite with the sword of your justice these monsters of crime, who have fed upon the blood of your countrymen with viperous fang, and who have desolated the once happy homes of our native land."

The jury, after half an hour's deliberation, returned a verdict of guilty, and the prisoners were sentenced to death.

From the time that I was appointed Senior Crown Prosecutor at Green Street, my work was very heavy, and my life extremely strenuous and stormy. In the long vacation we generally went abroad, and amidst fresh scenes and pastures new, I desired to forget law and Irish politics. During my holidays I made it a rule to read the Irish newspapers as little as possible. Occasionally, when a few days were at my disposal, I would pay a brief visit to my brother's place in Clare. My native air always set me up when I was feeling overworked or run down. Once, when on one of these short visits to my native wilds, I was the victim of an imposition which was not without an element of humour.

One day we were told that two nuns had called and desired an interview with my brother. This

was readily granted, and the two nuns were ushered into the room. One was tall and very voluble, the other was the possessor of very fine eyes, but was silent and demure. The talkative nun, who acted as spokeswoman, told us that they had come from America to this country on a begging mission, the object of which was to collect sufficient money to build a Catholic church in some wild region in America, where Catholics had no place of worship. The tall nun talked so earnestly, and with apparently so much pious zeal, that she induced my brother to give her a large donation towards the building of the projected church, and I followed his example.

She thanked us profusely, and her demure companion shot us a look of deep gratitude from her fine eyes. The spokeswoman then asked if she might collect among the servants. Permission was readily granted, and, the household having all contributed according to their means, the nuns again thanked us and departed. They appeared in church on the following Sunday, and the parish priest allowed a collection to be made for them at the door. Some weeks later I met Father P——, our pastor, and, in the course of conversation, said to him: "Well, what has become of the good nuns? Have they returned to America?" A strange and rather shamefaced expression passed over his countenance. "Haven't you heard?" he said. "They were not nuns; they were a couple of skilled impostors going through the county collecting money. They were man and wife."

The smaller and slighter was the man." Poor Father P—— felt very sore at having been so successfully imposed upon, and whenever I wished to get the better of him in any political argument or otherwise, I had only to say: "Well, Father, I think you are mistaken. We are all liable to make mistakes. Do you remember how you, a priest, were deceived by those *soi-disant* nuns?" After which remark, our worthy pastor was wont to lapse into gloomy silence.

## CHAPTER VII

TRIAL OF FRANCIS HYNES—"PETER THE PACKER"—A  
HUMOROUS JARVEY

IN August, 1882, at Green Street Court-house, Francis Hynes was charged with the murder of John Dolougherty. On the 9th of August, on the roadside at Knockanane, in Clare, Dolougherty was found in a dying condition. He had had a dispute about land with Francis Hynes some time before the murder. The case excited much interest, as Hynes was far superior in class to the ordinary criminal. He was the son of a professional man. A constable named Doyle, on hearing that Dolougherty was shot, went down the road for about four miles beyond where Dolougherty was found, and saw Hynes on the road. When he was asked what brought him there, he said he had come for a ramble. "How long have you been here?" the constable asked. "A couple of hours," Hynes replied. The constable arrested Hynes, and, on searching him, found in his pocket a package of snipe shot which corresponded in size with that which was afterwards found in the head of the murdered man, who, before he expired, said several times: "It was Francy Hynes who did it." Dolougherty

was shot from the front, and therefore must have seen his assassin. The evidence against Hynes was overwhelming, and the sympathy felt for him was difficult to understand. Dolougherty left a widow and seven children unprovided for, and James Murphy,\* in his forcible reply for the Crown, pointed out the amazing fact that no sympathy was felt for this unfortunate man. Hynes was found guilty and sentenced to death. The verdict was a signal for an outcry in the Nationalist Press, as, indeed, was then generally the case when any verdict favourable to the Crown was brought in, no matter how heinous the offence. There were frequent and systematic attacks on jurors. In the case of Hynes the attack was of a very shocking nature, and, if conscientious verdicts were to be obtained, and jurors protected, if could not be passed over. An article appeared in the *Freeman's Journal* in reference to this case. This article contained an attack upon the jury, and stated that the jurors were under the influence of drink the night before the verdict was given. Mr. Dwyer Gray, the proprietor of the *Freeman*, was summoned for contempt of Court, and was ordered to pay a fine, or undergo a term of imprisonment. He chose the latter course.

It was during these days of the Land League that the soubriquet of "Peter the Packer" was first given to me. In the South of Ireland at that time, juries were intimidated to such an extent that it was

\* Mr. James Murphy, Q.C., subsequently a Judge.



impossible to obtain conscientious convictions. I was the first to succeed in getting a jury to convict in that part of the country, and this success won for me the title of "The Packer." I certainly eliminated from the jury box, without apology, those who were prejudiced, and I would do it again under similar circumstances. I have always maintained that I ought to have been called "The Great Unpacker."

This soubriquet of "Peter the Packer" gave rise to many incidents which caused me no little amusement. Once I cross-examined a peasant named Bridget Maloney. In my endeavour to elicit the truth from her I said, persuasively: "Come, come, Bridget; tell the jury what occurred." The lady drew herself up majestically, pulled her shawl over her head, and said: "Mrs. Maloney to you, Pether, if you please." When I had at last succeeded in getting at the truth, the good lady, before leaving the witness-box, crossed herself devoutly, and, fixing an indignant gaze on me, exclaimed: "Glory be to God. What a man!"

On another occasion, shortly after my elevation to the Bench, I happened to be travelling on the Great Southern and Western line. I was sitting by the window of the carriage which had been reserved for me. The train stopped at Maryboro', where it was fair day. On the platform there was the usual crowd one sees in Irish stations on such days. A number of idlers had gathered round and were staring into the carriage. One man, who had been looking at

me more intently than the others, suddenly exclaimed, as he pointed to me: "Begorra, it's the Packer himself, boys!"

I was much amused, and the saying of the late Lord Morris came into my mind: "More people know Tom the fool than Tom the fool knows."

Once when prosecuting in Sligo at the Assizes I had a very amusing experience.

I had been in court all the morning, and, feeling the need of fresh air, decided to utilize a little leisure time in the afternoon by taking a drive. I secured the services of a most loquacious and humorous jarvey, who affected ignorance of my identity, probably in order to give me his views on things in general and on myself in particular. As we were driving away, he pointed with his whip to the courthouse, saying, "That's a terrible hard man inside."

"I believe he is a man with an indifferent reputation," I answered mildly.

"You may well say so," he replied. The man could appreciate scenery, and took me for a beautiful drive, at the end of which I handed him his fare with a substantial *pourboire*. Looking at the coin and then at me, he expressed his thanks by saying, "Well, after all, the divil isn't as black as he's painted."

## CHAPTER VIII

### THE MAAMSTRASNA MASSACRE—TRIAL OF THE JOYCES

IN August, 1882, the ghastly and blood-curdling Maamstrasna massacre took place. This nocturnal murder of a defenceless family is unparalleled in inhuman ferocity in the gloomy annals of agrarian crime. The scene of the murder was Maamstrasna, that wild region in Connemara known as the Joyce-country, where nearly all the peasants bear the name of Joyce. In that lonely and remote district, at the foot of a mountain, the cottage of John Joyce was situated. Joyce, an industrious man, was erroneously supposed to have given some information with reference to the murder of two bailiffs named Huddy, who had been in the employment of Lord Ardilaun. These men had been murdered, and their bodies, tied up in sacks, had been thrown into Lough Mask.

Joyce and his family were attacked about one o'clock when in bed. He was shot, and his son Michael mortally wounded, a bullet having pierced his stomach.

In November following the murder, before Mr. Justice Barry, Patrick Joyce, Patrick Joyce (John), Thomas Joyce (Pat), Michael Casey, Thomas Casey,

Patrick Casey, John Casey, Martin Joyce, Myles Joyce, and Anthony Philbin were arraigned on an indictment charging them with the murder of John Joyce, Michael Joyce, Bridget Joyce, Margaret Joyce, senior, and Margaret Joyce, junior. As the prisoners spoke Irish only, there was an interpreter in court. For the most part they looked respectable enough, but Myles Joyce had a singularly unpleasant countenance. They were tried separately, and pleaded not guilty. Patrick Joyce was first placed in the dock, but the trial was postponed until Monday, as Philbin and Thomas Casey became informers. Nearly everybody involved in the case seemed to be named Joyce. The most important Crown witness was one Anthony Joyce, who told the jury that on the night of the murder he was awakened by the barking of a dog. He went to the window, and, looking out, saw men coming along the road. The witness said that he thought there was "bad work" on hand, and, thinking that the men intended to attack his brother's house, he slipped out, and concealed himself behind a wall in advance of the men. When six of them had passed him, he ran by a short cut through the fields to his brother's house, and awakened his brother and his brother's son. Unperceived, they watched the six men. At a place called Derrypark the six were joined by four others, who came out of Michael Casey's house. The three men watching saw the ten men take the road to Maamstrasna, but, after a while,

in order to avoid observation, they took a circuitous route through a bog to the cabin of John Joyce, while the three watchers hurried on by the direct road, and, when they had reached John Joyce's cottage, lay down concealing themselves in some bushes. After a few minutes the terrified men in ambush heard the door of John Joyce's cottage being taken off its hinges, and then they heard shots and screams, after which all was silence, the silence of death. Horror-stricken, the listeners fled homewards, fearing that they, too, might be done to death. Patrick Joyce, whom I examined, identified nine of the prisoners; Anthony Philbin, the approver, corroborated the evidence of Anthony and Patrick Joyce. He said he had seen a revolver with the prisoner that night, and that the accused had helped to break in the door of Joyce's cottage.

Thomas Casey, the other approver, corroborated Philbin's evidence. The little boy, Patrick Joyce, the sole survivor of the unfortunate family, was produced to give evidence. He was so ignorant that he did not know the nature of an oath, and could not be examined. The scars on his head were pointed out to the jury, who, after an absence of eight minutes, returned to court with a verdict of guilty. The prisoner heard the verdict unmoved, but Judge Barry, who had the kindest of hearts, wept when he sentenced him to death. The next prisoner tried was Patrick Casey, who was also found guilty. The third prisoner, Myles Joyce, was tried for the murder of the

girl, Margaret Joyce, on whom the most revolting cruelty had been practised. He was a cousin of the murdered man—a fact which made the crime even more appalling. The prisoner tried to establish an alibi, but completely failed; he was found guilty and also sentenced to death. The other prisoners pleaded guilty and received a similar sentence, but were afterwards reprieved, and the death sentences commuted to penal servitude for life. Undoubtedly these men belonged to some secret society the object of which was the assassination of all people whom they considered obnoxious.

Two men named Nee and Kelly, supposed to be the instigators of the crime, escaped, and were probably in hiding on the shores of Lough Mask, whence they must have fled the country.

During the trial of Myles Joyce, my brief in the case was abstracted from my brief-bag, and was missing for three years. To the brief were attached some names from the jury panel, and in the marginal note was the letter C, which indicated that the Crown would exercise its prerogative to challenge.

In 1885, during the debate in the House known as the Maamstrasna debate, my brief, the letter C on which was represented as meaning *Catholic*, was produced by one of the Nationalist members of Parliament, in order to support the statement that I had endeavoured to prevent Catholics from serving on juries. My object was *not* to exclude Catholics or Protestants from the jury, but to get men thereon

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who would do their duty fearlessly. During this debate, when the good faith of Irish Judges and juries was impeached, Sir William Harcourt called attention to the fact that, on the trial of the first of the Maamstrasna prisoners, there were five Catholics on the jury. He also quoted the following extract from *United Ireland* :

“ On the trial of the first prisoner we may venture for once to point out that there were at least five Catholics on the jury, and we believe the Catholic jurors did their duty no less fearlessly, and their verdict will be approved and scrupulously respected.”

## CHAPTER IX

### THE IRISH INVINCIBLES—THE PHOENIX PARK MURDERS

THAT terrible secret organization known as the Irish Invincible Society was established in Dublin in the early eighties. Evolved from Fenianism, this society had for its object the murder, or "removal" (as the Invincibles expressed it), of those who had incurred its displeasure. The form of conspiracy advocated by this society was the lowest ever known in Ireland, or, perhaps, in any other country. The Fenians of '98 and 1803 aimed at the overthrow of English rule in Ireland by rebellion and bloodshed; the Invincibles relied upon the knife of the assassin to accomplish their ends. This recrudescence of Fenianism was responsible for a series of street murders. In February, 1881, a Fenian named Bailey was shot in a laneway, because he was suspected of having given information to the police. A large reward was offered for information which would lead to the conviction of the murderer, but every effort to find him was unavailing. Shortly afterwards another Fenian, named Kenny, was also shot in the street. Judge Lawson was on his way to the Kildare Street Club one evening when an attempt was made to assassi-



nate him, and Detective Cox was fired at and wounded while watching the movements of a gang of Invincibles. Mr. Field, who had acted as the foreman of a jury in the case of a man named Walsh, who had been convicted for the murder of a constable, was set upon by four armed men, jostled against a railing, and stabbed. Badly wounded, he fell to the ground, and was stabbed again several times. It was only by feigning death that he saved his life. The Invincibles Curley and Carey were arrested on suspicion after the Phoenix Park murders, but were released in a short time, as it was impossible to bring their guilt home to them, owing to lack of evidence.

The Invincibles had over and over again planned the assassination of Mr. W. E. Forster, then Chief Secretary for Ireland, but some strange intervention of Providence frustrated their designs.

I think it was on the Wednesday before the Phoenix Park murders that Mr. Forster finally quitted Ireland. On the evening of the same day, Sir Edward Carson (then Mr. Carson) and I went to Westland Row to wish Mr. Forster good-bye. We heard at the station that he had gone to Kingstown earlier in the day, and would dine there before going on board. Little did we know that there were fifteen Invincibles on the platform at the time waiting to stab the Chief Secretary! It was not until the trial of the Invincibles that we realized how narrowly he had escaped death that evening at Westland Row. Carey, the

informer, said at that trial that fifteen members of the society were waiting at the station with the intention of assassinating Mr. Forster as he entered the train.

That never-to-be-forgotten tragedy of the 6th May, 1882, when Lord Frederick Cavendish and Mr. Burke were stabbed to death, took place about seven o'clock on a lovely evening in the Park. The bodies of both victims, when discovered very shortly after the murder, were much mutilated. The wounds were caused by some sharp-edged instruments. Immediately after the murder, a car, upon which were five persons, was seen going at a desperate pace in the direction of one of the Park gates known as the Chapelizod gate. It was early in January, 1883, that twenty-one Invincibles were arrested, and a few days later Robert Farrell, who had been a Fenian, gave information to the police which resulted in the committal for trial of the following persons on the charge of murder: Joseph Brady, Daniel Curley, Timothy Kelly, Michael Fagan, Edward McCaffrey, James Mullett, Joseph Mullett, Patrick Delaney, Daniel Delaney, George Smith, James Fitzharris, Thomas Martin, Peter Carey, Edward O'Brien, Peter Doyle, Joseph Hanlon, Laurence Hanlon, William Moroney, Thomas Caffrey, Patrick Whelan, and Henry Rowles, who died in prison shortly after his arrest.

On the 11th of April, Joe Brady was the first of the Invincibles indicted for the murder of Mr. Burke. Judge O'Brien presided. The Crown counsel

were the Attorney-General, Mr. Andrew Porter,\* John Naish,† James Murphy, and myself.

The court-house represented a remarkable scene during these trials. The prison van was guarded by cavalry escort, as it was feared that some attempt might be made to rescue the prisoners. The Judge went to court accompanied by detectives armed with revolvers, and the Crown counsel were also under protection.

Dr. Webb, Q.C., Denis B. Sullivan, and Richard Adams defended Brady, who was one of the inner circle of the Invincibles—that is to say, he belonged to what was known among his confederates as the assassination club.

Much interest was taken in Carey, the informer, who gave his evidence in a cool, collected, and *nonchalant* manner. He was a well-dressed man of respectable appearance, with a sinister expression of countenance. I am perfectly convinced he could have given more information had he chosen. I remember Carey turning to Dr. Webb, who was subjecting him to a severe cross-examination, and saying, "I am only answering what they ask me; I know a great deal more. I am more friendly to you, Dr. Webb, than you think; bear that in mind."

The prisoner presented a different appearance from Carey. Brady was a great, strong, determined-looking young man. On the morning of the trial he leant over the dock as if to assault Carey, who gave

\* Afterwards Sir Andrew Porter. † Then Solicitor-General.

his evidence as if he were talking over the most ordinary events. He stated that he had himself pointed out Mr. Burke to the prisoner, saying, "Mind it is the man in grey," before giving the signal for assassination. Carey was the paymaster of the Irish Invincibles, and had formerly belonged to the Fenian Brotherhood. In his evidence he said that, after the murders, Brady told him that he had followed Mr. Burke, put his hand on his shoulder, and stabbed him; and that Lord Frederick Cavendish (whom Brady did not know) struck him with an umbrella, and called him a ruffian, at which Brady said: "I got annoyed, and, following him out into the road, settled him there. When I looked round I saw Tim Kelly near Mr. Burke, whereupon I went over to where Kelly had left Mr. Burke, and cut his throat, wiping my knife in the grass." Carey said seven men were assigned to what he called "the work," but that it was Brady and Kelly who actually committed the deed.

In all my experience as an advocate, I never heard of a murder so callously and coolly executed. A few minutes before its occurrence Carey had been an interested spectator of a polo match on the Nine Acres, and had remarked that it was "the first time he had seen the game, which was a right good one."

Smith, one of the Invincibles, worked at the Castle, and was familiar with the appearance of Mr. Burke. He was decoyed into joining the society in order that he might point him out to the assassins, who did not

even know him by sight. Smith declared that he was so overcome with horror and fright at the work assigned to him that he "shook like a sheet in the wind." He knew well that, were he to object to carry out the orders of the Invincibles, he would forfeit his own life. Indeed, the Invincibles, before the Park trial, had decided to do away with Kavanagh, the car-driver, and Smith, whom they had used as tools. Carey stated the objects of the society were, in the first place, to make history, and, in the next place, to remove all the principal tyrants in the country. He told the jury how the Invincible Society came to be established in Dublin by a man who went by the name of Walsh. The men selected for the society were sworn on a knife. Walsh, having enrolled Carey, James Mullett, Curley, and McCaffrey, informed them that the names put upon the removal list by the society in London were those of Mr. Forster and Lord Cowper, to which Mr. Burke's name was added afterwards. On this occasion Walsh gave Carey fifty sovereigns. Carey stated that Walsh introduced him to a man named Sheridan, who was disguised as a priest. With this individual Carey arranged that weapons should be brought over to Ireland for the purpose of assassination. Shortly afterwards, a woman, supposed to be Mrs. Frank Byrne, wife of the secretary of the Land League in London, brought Carey a consignment of weapons. Carey further stated that a mysterious person, whose name he had never discovered, but whom he knew by

the name of No. 1, used frequently to call on him and give him sums of money. This man was a Fenian named Tynan. These organizers of the Invincible Society were of a better station in life than their tools, and were in command of money. Before the Phoenix Park trials, Tynan, Sheridan, and the man Walsh, escaped to the United States. Those of the Invincibles, known as the inner circle, were accustomed to hold courts martial upon anyone suspected of giving information. I examined Michael Kavanagh, the car-driver, one of the four approvers who gave evidence in Brady's trial. He stated that, terrified and trembling all over, he drove Kelly and Brady from the scene of the murder at racing speed.

One could not help feeling sorry for dupes like Smith and Kavanagh, who were deceived and misled, and who acted at the dictates of ruffians such as Carey and Tynan, who, when the game was up, either informed or sought refuge in America.

If any Invincible was told to be at a particular place, there he had to be, and it was often only before the occasion arose that he was told what he was to do. Sometimes a man's courage would fail at the last moment, as in the case of Patrick Delaney. He had been told off to assassinate Judge Lawson, and, feeling he could not do so, touched one of the Judge's detectives, and having thus called attention to himself, was arrested, pistol in hand. The result of Brady's trial was a foregone conclusion. Both approvers, Smith and Kavanagh, swore that Brady was

present in the Park at the time of the murder, Kavanagh having been an eyewitness of the deed. A Park ranger and several other witnesses identified the prisoner as one of the men whom they had seen at the Park when the murder was committed. A young girl was the principal witness for the defence. She swore to having gone for a walk with Brady on the night of the 6th. On cross-examination it transpired that she was a personal friend of the prisoner, and was evidently keeping company with him.

Brady was found guilty (as Judge O'Brien said, before passing sentence of death), "upon cumulative and overwhelming evidence: evidence such as to preclude any intelligent person from entertaining any doubt of his guilt."

Daniel Curley was the second of the Invincibles tried, and the evidence was practically the same as in the case of Brady. All the informers were examined, Peter Carey, the brother of James Carey, being added to their number. Evidence was given to show that the prisoner had been in charge of the arrangements for the assassination of Mr. Burke and Lord Frederick Cavendish on the 6th of May. It was, of course, necessary to satisfy the jury that Curley had been actually seen in the Park on the day of the murder, and a servant-girl who had at one time been in service at the Chief Secretary's Lodge identified Curley. She stated that she saw "the scuffle" taking place in the Park, and that while she was feeling terrified, Curley had come towards her,





the Park murders, and that she herself and her daughter had also left Dublin shortly before the trial. On being asked if her son-in-law took a considerable interest in Irish politics, she briefly replied, "I don't know." The Attorney-General, however, pressed the question: "Come, madam," he said; "was Forester a Fenian centre here in Dublin—perfectly well-known on the directorate of the Fenian organization?" The good lady, affecting an air of complete innocence, answered the question by putting another:

"How can I tell?" she asked.

Judge O'Brien bade her answer "Yes" or "No."

She then said: "I know nothing."

When she was asked how she came to make the prisoner's acquaintance, she said she knew him through his coming to see her son-in-law, and she admitted that he had been coming to see Forester for a considerable time. She was then asked how Forester came to be acquainted with Fagan, to which question she replied by saying that she could not tell. The Attorney-General once more pressed her for her son-in-law's address, of which she again pleaded ignorance.

"Are you on bad terms with him, then, that you don't know his address?" she was asked.

"No, sir," she replied.

"Did you ever hear of his being arrested?"

The witness admitted that she had.

"Where?" she was asked.

"In Liverpool."

"When?" asked the Attorney-General.

“ Many years ago, before he met my daughter.”

“ Was he ever arrested in this city ?”

“ No, I never heard of it.”

“ Used he to carry a revolver ?”

“ No, sir; I never saw one.”

It was at this juncture that the dramatic incident took place. A constable was directed to stand forward, and the Attorney-General, pointing to him, said: “ Supposing it was deposed by that man that he arrested him in Camden Street with a six-chambered revolver in his pocket—would that be accurate ?”

On further cross-examination, it transpired that the very respectable-looking Mrs. McMahon was herself arrested in company with her husband at the house of Joseph Mullett, on the day that the latter was arrested for having attempted the assassination of Mr. Field. The McMahons were released next day, and the lady's husband left Ireland for ever. Her son-in-law was also a fugitive from justice, so that her evidence had a most damaging effect on the prisoner's case, and showed clearly that he belonged to the Fenian Brotherhood. He was sentenced to death.

Kelly was the last prisoner who expiated his crime on the scaffold. Though barely twenty years of age, he was one of the most desperate of the Invincibles, and was one of the men who had been actually engaged in the attack on Mr. Field. I was told that Kelly had gone to a well-known photographer's to buy the photographs of the Crown Prosecutors, James

Murphy and myself. He wished to possess them in order that he might identify us for the purpose of assassination. Luckily the photographer refused to sell or show him the photographs. In those days one went about with one's life in one's hands. Judge O'Brien was supposed to be a doomed man, and four detectives kept constant watch over him. I, too, was under police protection for a considerable time.

At the first and second trial of Kelly there was some difficulty in identifying him as having been one of the Invincibles in the Park on the evening of the 6th of May, but at the third trial his guilt was clearly established. An Invincible named Hanlon, who was examined for the first time, swore he had seen the prisoner on the scene of the murder, and Kavanagh, the car-driver, deposed to having driven him from it. Counsel for the defence impeached Kavanagh's testimony on the ground that it was not reliable, owing to his having taken drink that day. Carey swore that Kelly was there; and Huxley, a gardener in the service of the Guinness family at Farmleigh, stated that he had seen Kelly get off Kavanagh's car.

The Invincibles Caffrey and Delaney pleaded guilty to the charge of murder, and were sentenced to death. Delaney's sentence was commuted to penal servitude for life. Fitzharris, a cab-driver, who drove Smith and Carey to the Park on the night of the murders, was indicted for having aided and abetted the murderers of Lord Frederick Cavendish and Mr. Burke, and was sentenced to lifelong imprisonment.

Laurence Hanlon and Joseph Mullett, tried for the attempted assassination of Mr. Field, were sentenced to penal servitude for life. Mr. Field received no less than six wounds. Joe Brady, under sentence of death at Kilmainham Prison, had over and over again struck at him. The remaining Invincibles pleaded guilty of having unlawfully conspired to murder certain public officers of Her Majesty's Government, and were sentenced to various periods of imprisonment. The Government, fearing for Carey's safety, sent him to South Africa, but, ere he reached Cape Town, he was shot by Francis O'Donnell, a Fenian.

to re-enter the carriage, lo and behold ! the escort of soldiers had trotted off at either side of the empty vehicle, and the judge was left standing, bag in hand, at the station, unrecognized. The escort and carriage reached the court-house, the door was thrown open, the soldiers saluted, but no Judge alighted. The Sheriff stood hatless and bewildered, when, all at once, a sorry-looking fly appeared on the scene, from which the Judge emerged breathless, with bag in hand.

Though it was predicted that Judge O'Brien would never die in his bed, he lived to old age. He never married, and was supposed to be a misogynist, but was very fond of young people. My sister and I, when children, were often invited to his house, where he made us very happy by permitting us to inspect his collection of Dresden china shepherds and shepherdesses and his beautiful missals.

## CHAPTER XI

EARL SPENCER—SIR REDVERS BULLER

IN the bad times a familiar figure to be seen in the streets of Dublin was that of the Viceroy, Lord Spencer, riding in the centre of an armed escort of Lancers, whose flashing swords plainly testified their readiness in case of emergency. Lord Spencer was supposed to be in constant peril of death at the hands of assassins. His life while in Ireland must have been little short of martyrdom; he could not move without a body of armed men. Daily the Nationalist Press poured the most virulent abuse upon him. When reading these attacks one wondered whether the language of vituperation had not been exhausted, and yet, when he declared himself in favour of Home Rule, those who had abused him most were readiest with fulsome adulation, or, as Mr. William O'Brien put it, "were the first to black his boots."

Lord Spencer had many of the qualities which appeal to the Irish people. He was courageous and dignified, and there was something of the *grand seigneur* about him; but what appealed to them most was his love of sport. He was a most fearless rider to hounds, and one day, when riding with the Waterford Hounds, "took a great toss,"

as we say in Ireland. The meet was at Curraghmore. The country people had all turned out "to view the Lord Liffenant." The Waterford people were justly proud of the prowess of the Beresfords in the saddle, and were a little alarmed lest they might be cut down riding, inasmuch as it was known that Lord Spencer was "a terrible hard man to hounds." The hounds in full cry came to a huge stone wall, nearly five feet in height; most of the hunt turned away, but not so Lord Spencer, who, without a moment's hesitation, rode at the wall in the stiffest place, with the result that he came a cropper. At the same moment the voice of a country yokel was heard calling out: "Lord Marcus, Lord Charles, for the love of God, ride like the divil—the Lord Liffenant is stretched!"

When Lord Spencer in 1885 declared himself a Home Ruler, it was indeed a bolt from the blue, and great was the surprise of Ireland. I was told that he went to see Mr. Gladstone to tell him of his determined opposition to the Home Rule Bill. During the interview Mr. Gladstone used all his eloquence and persuasive powers, and after two hours succeeded in talking "over" Lord Spencer. When Mr. Gladstone became a Home Ruler, I was obliged conscientiously to sever my connection with the Liberal party, like so many other Unionists, after which I saw very little of Lord Spencer. The last time I met him was at Homburg. He was then in failing health, and was at Nauheim for heart treatment, whence

he had come to spend an afternoon at Homburg. He was much changed, and the once red beard had turned white. He recognized me first, and we were, I think, mutually glad to meet again, for, though our political views had widely diverged, we had both been through the bad times in Ireland. We talked about the old and troubled days, but carefully eschewed politics. Next day we met again at lunch at Frankfort; we were both the guests of Lady Oppenheimer. Someone began talking about politics, and Lord Spencer made a statement which I contradicted. He did not easily brook contradiction, and grew rather heated. Next day, when I had forgotten all about the matter, I received a letter from him saying that "if, in the heat of the moment, he made any observation which might have seemed rude, he was very sorry." We met again in a day or two, and had a friendly talk, but politics were banned. When I was created a peer, one of the first letters of congratulation which I received was from Lord Spencer.

In 1884 Sir Redvers Buller was appointed Under-Secretary for Ireland. I had met him before in the south, when he was sent to inquire into the condition of the Irish tenantry.

I saw a great deal of Sir Redvers when he was in Ireland. I always liked him, and never doubted his courage or ability, though sometimes I questioned his sagacity. Under a gruff exterior he possessed the warmest and kindest of hearts. Everybody who had dealings with him in Ireland liked him immensely,



and Lady Audrey Buller charmed us all. I remember on one occasion, however, feeling rather annoyed with Sir Redvers. We were real friends, and, as we both held office at the same time, frequently saw each other at the Castle. One day I asked him for a small appointment for a friend of mine, who was in every way qualified for the position. Buller listened to my recommendation in a very surly manner, barely answering me. I felt vexed and annoyed with him. A few days later I met my friend, and said: "Well, I spoke to Buller about you; it is the last time I will ever request him to do anything for me." "But, surely, you heard that I received the appointment the very day after you had spoken to him?" said my friend. This was an instance of Buller's gruff manner and kind heart.

## CHAPTER XII

MR. A. J. BALFOUR—THE MITCHELSTOWN RIOTS—TRIAL OF  
MR. WILLIAM O'BRIEN—A BOGUS MESSAGE—THE PARNELL  
COMMISSION

IN 1887 I was appointed Solicitor-General for Ireland, the same year that Mr. Arthur Balfour became Chief Secretary. When one looks back at the attitude adopted by the *National Press* with regard to his appointment, one cannot fail to be amused at the ignorance displayed in its columns as to the character of the new Chief Secretary. It was asserted that he was "a lackadaisical dilettante," whose relationship to Lord Salisbury was mainly responsible for his having secured the appointment. It is now universally acceded that he was the most successful Chief Secretary Ireland has ever had. In him I found a fearless chief. In holding office under him one felt that his policy was consistent, and that he was willing to share responsibility, and to stick to his colleagues. He was not to be intimidated by abuse nor by the asking of questions in the House. Shortly after his appointment to the Chief Secretaryship in that memorable debate in the House of Commons known as the Mitchelstown debate, he gave evidence of that firm-

ness and grit which conduced so much to his political success in Ireland. A public inquiry into the conduct of the police with regard to the riots at Mitchelstown was demanded. On the 9th of September, 1887, an enormous Nationalist meeting was held at Mitchelstown, County Cork, where the trial of Mr. William O'Brien was to take place. The police, having endeavoured to force a way from the outskirts of the crowd for a Government reporter, were assailed with stones, sticks, and any other missiles at hand, by an infuriated mob. The police, being in the minority, withdrew to their quarters (a short distance away), followed by the crowd, intent on attacking the barracks. A constable was badly hurt, but it was not until the barrack was attacked, and the door was broken, that the police fired. One man was shot, and two were wounded. The moment the news of the fray reached Dublin the conduct of the police was a subject of inquiry at the Castle. I was kept busy looking into the matter. The Chief Secretary and the Attorney-General were in London, and, as it was necessary for them to have material for the discussion of the question when it came before the House, I had the direction and advising of things in Ireland, and had to inquire into matters in order to ascertain whether the firing was justifiable or not. It was not random firing caused by panic, but the deliberate firing of men acting under orders from their officers, who had instructed them to fire at that portion of

the mob which was attacking the barracks. One policeman who had received severe internal injuries had to crawl alone to the barracks under a volley of stones, and was only saved from immediate death by the fire from the barracks.

When the Chief Secretary was questioned in the House of Commons by the Radicals and Nationalists with regard to the riots, he gave the leading facts, and, while deploring the fatal issue, he completely exonerated the police from all blame. Mr. Balfour informed the House of his determination to uphold law and order in Ireland, despite attacks, undeserved abuse, and unfair criticism. "We shall," he declared, "pursue to the best of our ability the policy founded upon justice, and which in the long run must end in the conciliation of the great community, with whom we desire to live in peace and amity." These few words outlined that policy which was so successfully pursued.

On the 12th of September the inquest in connection with the Mitchelstown riots took place, and Mr. William O'Brien was put on trial before a Crimes Court.

Mr. Harrington cross-examined the police in a most outrageous manner, with a view to bullying them into making admissions. On the 11th of September Mr. William O'Brien was arrested and conveyed to Mitchelstown to be tried by resident magis-

trates. The counsel for the Attorney-General was Edward Carson, while Mr. Harrington acted for Mr. O'Brien. After many stormy scenes and many fireworks on the part of Mr. Harrington, he, at the close of the trial, threw down his brief and left the court. Mr. O'Brien was sentenced to three months' imprisonment by Captain Eaton, R.M., and Mr. Stokes, R.M. Mr. O'Brien deferred his imprisonment by an appeal to another Court.

On the 2nd of October a letter from Mr. William O'Brien under the heading "A Revelation," appeared in the *Freeman's Journal*. In this letter Mr. O'Brien said that on the last day of his trial he had been informed that I had sent to Edward Carson a telegram in cipher worded thus: "O'Brien will beat us. Harrington will be disbarred at our next meeting"—that was to say, at the next meeting of the Benchers. Of course, I never sent or caused any such message to be sent. By the 5th of October the supposed telegram had grown in length; it now contained the words: "Mistake going on the first evidence. O'Brien will beat us. Leahy no good." (Leahy was a constable who gave evidence.) "Keep to the second case and that only. You are making a farce of the affair. Can't you keep quiet? Send on your complaint against Harrington. The Benchers at our next meeting will do the rest." I wrote to the editor of the *Freeman's Journal* with regard to the bogus cipher message thus:

“ *From the Solicitor-General to the Editor of the ‘ Freeman’s Journal.’* ”

“ SIR,

“ I see in the *Freeman’s Journal* of to-day a letter headed ‘ A Revelation.’ ”

“ There is not in that revelation one word of truth.

“ I remain, Sir,

“ Your obedient servant,

“ PETER O’BRIEN.

“ 41, MERRION SQUARE,

“ *Monday, 3rd October, 1887.* ”

The following letter appeared in the *Freeman*, of the same day:

“ SIR,

“ With reference to the telegram alleged in to-day’s issue of your newspaper to have been sent to me by the Solicitor-General, I beg to state that I never received any such telegram, or any to a like effect. I had no communication by telegram or letter or otherwise, direct or indirect, from the Solicitor-General from the time I left Dublin to conduct the Mitchelstown prosecutions until my return.

“ The whole story is absolutely false.

“ Your obedient servant,

“ EDWARD CARSON.

“ 80, MERRION SQUARE,

“ *3rd October, 1887.* ”

(The *Freeman* on the 4th of October seems to have had its doubts about the matter, and called on Mr. O'Brien to verify his charge.)

I was naturally desirous that Mr. William O'Brien should produce the alleged cipher telegram, but that, of course, was impossible, and one can only conclude that he must have been deceived by some mendacious information.

It was intimated to me that if I so desired I could hold a brief for *The Times* in the inquiry into Parnellism and crime. I went to London in connection with the case, and saw Dick Webster,\* but, not liking the lines on which the case was being run, I came to the conclusion that I would not take the brief.† Shortly afterwards, when in London, I was talking to a friend who was on the staff of *The Times* newspaper.

“What about Parnellism and crime? Have you a strong case?” I asked.

“A very strong case,” my friend replied.

“Have you evidence such as to establish the connection between Parnellism and crime?” I further inquired.

“We have important letters,” he answered, and he told me of the letters alleged to have been written by Parnell.

\* Afterwards Lord Alverstone.

† Though my father declined a brief in the Parnell Commission, I have heard him say that the inquiry did much valuable work in “showing up” the manner in which agrarian crime was manufactured in Ireland, and also in exposing its real instigators.

“Where were those letters procured?” I asked. I was more than surprised to hear that Pigott was the purveyor. I warned my friend to be careful, and told him that it had once been suggested to me in some case to produce Pigott as a witness, and that I refused to do so, saying I would not touch that man with the end of a fishing-rod.

“Ah, but our case is a very strong one,” my friend said, so I let the matter drop.



## CHAPTER XIII

### NEWSPAPER ABUSE—THE CHANNEL CROSSING

WHEN I was Attorney-General and had to administer the Crimes and Coercion Acts, I had the distinction of being the most abused man of Ireland. I was denounced at political meetings, and in the daily papers scurrilous attacks were made upon me, as well as upon the Chief Secretary (Mr. Balfour), and Edward Carson, who devilled for me. Newspaper abuse never yet intimidated anyone worth his salt, and, as is the case with everything in Ireland, it has its comic side, as the following story will prove. One day, when I was in my room in Dublin Castle, the door opened, and a Clare man, a tenant of my brother's, thrust in his head.

"May I speak a word with your honour?" he asked.

"To be sure, D——," I said. "Come in."

When I had shaken hands with him, I asked him what he wanted, and he told me that he wished to enlist my support for a relation of his who was candidate for some local appointment. I promised to do what I could, and we had a talk about Clare and old times.

When I wished him good-bye he thanked me effu-

sively, and, just before leaving the room, turned round and said:

“ There’s to be a great meeting at the Cross Roads on Sunday, and I am to take the chair. You are to be fiercely denounced, and I’ll have to give you the devil of a belting;” adding with the most comical expression, “ You’ll understand.”

“ Belt away, Tom,” I said, as he took his departure.

As Attorney-General for Ireland, I had frequently to visit the Irish office at Queen Street. This involved frequent crossings to England, which were the reverse of agreeable to me, for I am a most indifferent sailor. On one of my return journeys to Ireland I conversed on board the steamer with an American full of bounce and swagger, and obviously suffering from “ swelled head.” In the course of conversation, I spoke apprehensively of the misery of sea-sickness and the coming crossing. He looked at me with contempt as he said: “ Wal, I guess I have been across the Atlantic forty times, and I don’t know what sea-sickness is. Sea-sickness on *your* bit of sea? No, not likely !”

“ Well, sir,” I said, as I settled myself in my berth, “ if you wish to see an object of abject misery, look in my direction in another half-hour !” The passage was, in nautical phraseology, decidedly choppy, but, by some miracle, I escaped the dreaded sickness, and happening to glance across to where my American friend lay, saw, to my surprise, that *he* was indeed an object of abject misery—the victim of the most

humiliating sufferings—a ghost, as it were, by daylight. Catching his eye, I was heartless enough to give him a truly diabolical thrust. “Sir,” I said, “our ‘bit of sea’ seems to try you more sorely than the Atlantic Ocean. What?” He did not reply, but shot me a look of hate. I doubt that he ever bragged of his sailorship again. Poor fellow! All the starch had left him; he was, indeed, a rag!

## CHAPTER XIV

MR. WILFRED BLUNT—BLUNT *v.* INSPECTOR BYRNE

My first appearance in court as Attorney-General for Ireland was in the important action of *Blunt v. Inspector Byrne*.<sup>\*</sup> This case was in connection with the suppression of a meeting of the National League at Woodford, County Galway, where evictions had taken place on the Clanricarde estate. The object of the meeting was to celebrate the anniversary of the Plan of Campaign, and to denounce Lord Clanricarde. Woodford was the scene of numerous outrages, and some time before the proposed meeting a process-server, who lived in the village, had been brutally murdered.

In September a meeting was held at midnight at Woodford. It had been proclaimed by the Lord-Lieutenant, and at the meeting the proclamation was burnt by Mr. William O'Brien in the presence of Mr. Wilfred Scawen Blunt, an eccentric Englishman, who championed the Irish cause principally from

<sup>\*</sup> I have heard my father say that this was the most important action ever tried in Ireland, the real question being whether the law or the Plan of Campaign was to be triumphant.

—EDITOR.

motives of vanity and a love of notoriety. Though digressing, I cannot refrain from giving a short account of his somewhat Pickwickian travels in Ireland. He had been in the diplomatic service, but being a crank and quarrelsome, was constantly in conflict with the authorities. In Egypt he gave endless trouble, and made himself unpopular with the Government officials. His espousal of the Nationalist cause was a surprise to most people, as he had no connection whatsoever with Ireland, where he was chiefly known as a breeder of Arab horses. Having lived much in the East, he had adopted the Oriental fashion of squatting on a carpet instead of sitting on a chair, and was, according to himself, half a Moham-  
medan in religion, though, when in Ireland, he assiduously cultivated those priests and Bishops who were in sympathy with the Plan of Campaign. He belonged to an old Catholic family, and had brains sufficient to render him intensely mischievous. He had something of Don Quixote in his character, and also something of Mr. Pickwick.

Mr. Blunt was to address a Nationalist meeting at Woodford on Sunday, the 23rd of October. By a proclamation, signed by Lord Londonderry and Mr. Balfour, the meeting was prohibited, and all persons were warned to abstain from taking part in it.

Notwithstanding the proclamation, on the afternoon of the 23rd, accompanied by Lady Anne Blunt, Mr. Rowland, a member for some English constituency, and an English Protestant clergyman, Mr.

Blunt mounted the platform at Woodford, and opened the proceedings. Inspector Byrne informed him that the meeting was illegal, and that it was his duty to prevent it. Mr. Blunt replied that he intended to hold it, and began to speak. The police then cleared the platform.

In the scrimmage Mr. Blunt fell with the police over the edge of the low platform. Pale, breathless, and doubtless, in his own opinion, very heroic, he rose to his feet and asked the police why they were such d——d cowards as not to arrest him. Mr. Blunt and Mr. Roche, a poor-law guardian, were then arrested and brought before the magistrate on the charge of having resisted the police. Both were offered bail on condition that they would make no further attempt to hold the meeting there that night. They refused, and were sent to Loughrea prison. Next day Mr. Blunt was brought before two magistrates. It was proved that he had resisted the police, and he was sentenced to two months' imprisonment subject to appeal at Quarter Sessions. He availed himself of the liberty to appeal, and was released on bail. In January he had to surrender himself to bail at Portumna County Court. Judge Henn tried the case, and condemned him to imprisonment for two months.

An action for assault was filed in Mr. Blunt's name against Inspector Byrne, the Divisional Magistrate in charge of the police at Woodford. The trial began in the Court of Exchequer on the 11th of February,

before Chief Baron Palles. Atkinson\* was with me in the case.

Though the action was in point of form a civil one to recover damages for alleged assault, battery, and false imprisonment, it was, as a matter of fact, an attack upon the executive, the real question being the suppression of the Woodford meeting of the 23rd of October. Sam Walker, who stated Mr. Blunt's case, endeavoured to show that, though a member of the English Home Rule Union, Mr. Blunt had no connection with the National League. I cross-examined Mr. Blunt as to his connection with the Plan of Campaign, and he was obliged to admit that he was present at the midnight meeting at which the Queen's Proclamation was burnt by Mr. William O'Brien.

Mr. Blunt's memory and eyesight were on occasions conveniently defective. When cross-examined, he seemed to remember so very little of what had taken place that I suggested giving him a copy of the *Freeman's Journal* so that he might refresh his memory by reading aloud the report of his *own* speech. This, he said, was impossible, as imprisonment had so impaired his sight that he could not read print!

I asked Mr. Blunt if he knew that the proclaimed meeting was called in order to celebrate the anniversary of the Plan of Campaign. He replied thus: "I heard something of it; I read about it in the newspapers." He also said that he had gone to see Mr.

\* Now Lord Atkinson.

John Roche about some evictions, and that the place was barricaded and boiling water was thrown on the police, and that he knew there were other evictions pending in the neighbourhood.\* I said that Woodford was a "black spot," whereupon Mr. Blunt replied that he considered it a very bright one on account of the patriotism of its people.

"Burning the Queen's Proclamation made it bright?" I said. "Sending the Proclamation to blazes, as O'Brien said he did, made it bright?"

I asked Mr. Blunt if Mr. O'Brien said that he was going to Woodford to tackle Lord Clanricarde, to which he replied: "I cannot recollect." "Come now, sir," I said; "did he not say that he was going to Woodford to tackle a man of the same kidney as Colonel O'Callaghan?" "I do not recollect," he replied. I then read from the *Freeman's Journal* a portion of Mr. Blunt's speech in which he referred to Colonel O'Callaghan as a "tyrant," and a "rack-renter," and asked Mr. Blunt was I to understand that his sole object in calling the Woodford meeting of the 23rd was to prevent crime? To which he replied, "Certainly," and that he had come to Ireland to show his warm approval of Mr. William O'Brien's conduct. After this I did not deem it necessary to further cross-examine Mr. Blunt. Mr. John Atkinson,† in replying for the Crown, caused amusement

\* There had been evictions at Bodyke, Colonel O'Callaghan's property, where vitriol had been thrown on the police.

† Now Lord Atkinson.



in court by saying that Mr. Blunt had come to be the counsellor, friend, and protector of Mr. William O'Brien, and they might as well talk of the ass protecting the lion. Atkinson read a little poem by Mr. Blunt which ran somewhat as follows:

"No life is perfect that has not been lived:  
Youth in feeling—Manhood in the battle—  
Old age in meditation."

There was considerable amusement when Atkinson said that he greatly feared this line had been plagiarized from the ideas of a philosophic friend of his, Dalby O'Shaughnessy, who, in conversation with him on the subject of the "Seven Ages," had said: "Shakespeare's idea was all nonsense; there are only three ages: the first period is when you are thinking of all the divilment that you can do, then the period when you are doing it, and the third period when you are making your soul."

Atkinson admitted that Mr. Blunt had put it in a more refined and chaste manner, but he contended that the idea was Dalby O'Shaughnessy's.

The trial lasted for over a week. The Chief Baron, in summing up, pronounced a severe condemnation of the Plan of Campaign, but the jury disagreed. When the trial was over I heard that Mr. Blunt said: "I would have had a verdict if it had not been for 'Peter the Packer,'" which remark I regarded as a compliment.

## CHAPTER XV

MR. DILLON ARRESTED—SOCIAL LIFE IN DUBLIN—FATHER  
HEALY—CRICKET—MONSIGNOR PERSICO

IN October, Mr. Dillon, who had been travelling throughout the country in company with Mr. Scawen Blunt and Mr. William O'Brien,\* making inflamma-

\* Shortly after Mr. William O'Brien's imprisonment Mr. Hayes Fisher stayed with us. He was at that time private secretary to Mr. Arthur Balfour. Mr. Fisher told us that one night, after the inmates of the Chief Secretary's Lodge had retired to bed, he was awakened by a loud and insistent ringing at the hall door bell. Wondering what on earth could be the matter, he rose, and hastily slipping on a coat over his pyjamas, hurried downstairs. The knocking and ringing continued, and a loud voice requested admittance. Mr. Fisher concluded, not unnaturally, that something of paramount importance had occurred which required the Chief Secretary's instant attention. Holding a bedroom candlestick in his hand, he unbarred the door, and peered into the darkness—a burly person stood before him, and said he had come on behalf of the Corporation to inquire if it were true that because Mr. William O'Brien had refused to wear prison garb, his clothes had been removed, and that he had in consequence caught a severe chill. Mr. Fisher's reply was brevity itself as he closed the door and returned to his room. The *National Press* next morning gave a most sensational account of an interview alleged to have taken place between the Chief Secretary himself and the Mansion House emissary. The paper stated that, after repeated knocking at the door of the Chief Secretary's Lodge, Mr. Balfour appeared wearing the coat of his privy council suit over his pyjamas. The article went on to

tory speeches, was arrested under the Crimes Act. A question had been raised as to whether Mr. John Dillon, who had the courage of his convictions, should be prosecuted for his part in promoting the Plan of Campaign, as it was feared that his arrest would lead to further agrarian outrages. The case was submitted to me, and I gave as my opinion that it would be a disgrace to the administration of the law to prosecute the mere tools in these matters, and not to prosecute the father and inciter of the Plan of Campaign.

The troublous times of 1886 to 1889 did not affect the social life of Dublin. Never was the Irish capital gayer than when Lord Londonderry was Viceroy. He and Lady Londonderry exercised a wide but discriminating hospitality. Lord Londonderry's love of sport endeared him to the Irish people. His resignation of the viceroyalty in 1889 was universally regretted by everybody in Ireland. We were lucky in having as his successor Lord Zetland, another sporting Viceroy. Lady Zetland was kindness personified, and soon made a complete conquest of all Irish hearts. Dublin society was very pleasant in those days.

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state that the Chief Secretary had kept the Mansion House official waiting while he pinned on a decoration, which glistened on his breast ! This account provided much amusement at the Chief Secretary's breakfast-table, inasmuch as in the darkness, illuminated only by the light of Mr. Fisher's candle, the Mansion House official had taken a hastily donned cricket blazer, bearing the arms of a cricket club worked upon it, for a privy council coat and decoration.—EDITOR.

There was a great deal of entertaining, and Lord and Lady Wolseley dispensed hospitality at the Royal Hospital on a large scale. The pleasures of these entertainments were enhanced by the presence of many witty guests; amongst others, Father Healy, and Dr. Nedley, who acted as a sort of Boswell to the witty *Padre*.

In my household Father Healy was a *persona grata*, and we were much attached to him. He came to see us very often, and we noticed that, when I was harassed or worried he was sure to come. I regarded a visit from Father Healy in the light of a stimulating tonic, which had the most cheering and inspiring effect. As I write, I seem to see the dining-room door of our Dublin house open, when we were seated at luncheon, and Father Healy come into the room unannounced, his round face all smiles, and the kindly grey eyes twinkling. He used to fire off several brilliant sallies and leave us as suddenly as he had come, but in the brief space of his visit our spirits would undergo a change.

One day he told me, with no little pride, how he had floored Mr. Gladstone. Father Healy was staying in a house where Mr. Gladstone was also a guest. The Grand Old Man had tried to draw Father Healy into a religious argument, but could not succeed. I do not think that at any time of his life the *Padre* desired to shine in theological controversy, neither did he wish for an argumentative discourse with Mr. Gladstone. The conversation had turned on the

subject of dispensations. Somebody remarked that some foreign royalty had bought a dispensation (and named the sum which he had to pay), in order to enable him to marry within the forbidden degree of kindred. The bride-elect was young and beautiful, the bridegroom many years her senior. "Now, come; what do you say to that, Father Healy?" asked Mr. Gladstone. "I say that the fellow got the dispensation a great deal too cheap," said the ever-ready Father Healy. On another occasion Father Healy told me that he had met at Bray Station a young lady—one of the Dublin belles—in a donkey-trap. She was in a perfectly exhausted condition, and explained that her donkey, on the way to the station, had taken fright and run away with her. "Faith, then, he is no ass," said Father Healy to the pretty girl. Many of Father Healy's stories have become "chestnuts," and lose much in the telling. In order to appreciate them fully, one should hear the delicious brogue in which they were told, and see the humorous twinkle in the *Padre's* eye. As an old friend of Father Healy, I can say that, through all the long years of our friendship, I never once heard him utter an unkind or uncharitable word of anyone.

During Lord Londonderry's reign we had some exciting cricket matches between the Bar and the Viceregal teams. One day, having gone to the Viceregal Lodge to see His Excellency about some matter, I was told he was on the cricket ground. I found him looking on at a match that the Viceregal team were playing against some cricket club. "You are

not a cricketer, Attorney?" His Ex. said to me. I said that was the case, and that we had some excellent cricketers among the members of the Irish Bar. "But they could not beat the Viceregal team," said His Ex. "I am not so sure about that," I replied. "I challenge you to a match." "Done!" said I. "Wigs upon the green," murmured His Ex.

I was honorary captain of the Bar team. We had some excellent matches and played the Zingari, giving them a pretty hot time.

While the land agitation was at its height I met, at the house of Sir Richard Martin,\* Monsignor Persico, the Papal Envoy sent from the Vatican to inquire into the agrarian agitation in Ireland. Monsignor Persico was a courteous and affable diplomatist, who fully understood the value of silence. He listened with interest to what he was told about boycotting and the Plan of Campaign, and was besieged by Unionists, Nationalists, and ecclesiastics, all anxious to impress their views upon him. To all alike he presented an inscrutable, enigmatical countenance. It was impossible to glean any information as to his own views—in fact, it would have been easier to read the expression on the face of the Egyptian Sphinx than on the face of the Papal Envoy. When the Pope eventually issued the Papal Rescript condemning the Plan of Campaign, the secret of Papal condemnation was so clearly guarded that it came as a thunderbolt upon the priests and Nationalists of Ireland.

\* A wealthy and influential Catholic.

## CHAPTER XVI

### THE GWEEDORE TRIAL

ONE of the last cases in which, as Attorney-General, I prosecuted was the Gweedore trial in October, 1888. Shortly after its termination I was elevated to the Bench. Though the Gweedore case presented many difficulties, it was brought, I am happy to say, to a most successful issue. The Rev. James McFadden, one of the many prisoners, on whom all the interest of the case was centred, was parish priest of Gweedore, a wild district in Donegal. He was a firebrand, an advanced Nationalist, and, being a warm advocate of the Plan of Campaign, had been prominent in inciting the tenants on the Olphert Estate to resist eviction.

Father McFadden may have been sincere in his views, but he was arrogant, and not devoid of that vanity which is not infrequently met with in the ecclesiastic. He had made numerous inflammatory speeches, and a warrant was issued for his arrest; but he evaded the police so skilfully that for some time they found it difficult to effect it. The inspector of the district was a prey to superstitious fears, and professed to have seen a phantom helmet, headless, lying at the door of the police barrack, which proved

and Mr. John Ross.\* For the defence were The MacDermot, Q.C., and Mr. Houston. Six prisoners pleaded guilty to manslaughter, nine admitted misdemeanour, while Father McFadden himself pleaded guilty to obstructing the police. I said in opening the case: "I think, having regard to the statement of The MacDermot, it is only right on my part to say that an acknowledgment of guilt and submission to the law are matters which have always been to some extent considered in the punishment inflicted."

A jury having been sworn, Judge Gibson stated that the prisoners had pleaded not guilty of murder, but guilty of manslaughter, and directed them to find a verdict accordingly, which they did. A prisoner named Coll, who was the first to strike Martin, and who was seen in the stone-throwing crowd, was found guilty of manslaughter and sentenced to ten years' penal servitude; while the other prisoners who were prominent in the attack on the police were given various terms of imprisonment. Judge Gibson then addressed Father McFadden, saying that, the Crown having abandoned proceedings against him, it was only necessary for the Judge to consider how far he could accede to the suggestion that Father McFadden should be allowed on his own plea of guilty to stand out on his own recognizances. He dwelt upon the distressing position in which Father McFadden was placed—a criminal at the bar—by his ill-advised evasion of arrest, and all the misery and punishment

\* Now a distinguished Judge.



stepped towards the Presbytery, which was in close proximity to the church, and managed to get inside the door, which was then slammed. There were only seven police sent to effect the arrest, and the hostile crowd set upon them. Soon Sergeant Carey was bleeding profusely from a blow, while Inspector Martin, when endeavouring to enter the Presbytery, was knocked down, and, when prostrate and defenceless on the ground, was done to death by a violent blow from a stone. While this ghastly scene was being enacted, two women were looking on from the Presbytery window, and, to their shame, made no attempt to save Inspector Martin. One was a servant-girl, the other a relation of Father McFadden—a sister, I believe. Had Father McFadden come forward himself and begged the crowd to disperse, bloodshed might undoubtedly have been avoided. Probably, when too late, he much regretted not having done so. The Gweedore murder evoked much interest. As I have already said, the case presented many difficulties. It was impossible to try the priest on a charge of murder or manslaughter. Surely he deserved punishment, but what was to be done? On the 30th of October the court-house was densely crowded, the air was stuffy, and those who thronged the place, evidently expecting a protracted trial, were doomed to disappointment, for it was brought to a speedy and satisfactory close. With me in the case were Mr. Ryan, Q.C., Mr. Con Molloy, Edward Carson,\*

\* Now Sir Edward Carson

and Mr. John Ross.\* For the defence were The MacDermot, Q.C., and Mr. Houston. Six prisoners pleaded guilty to manslaughter, nine admitted misdemeanour, while Father McFadden himself pleaded guilty to obstructing the police. I said in opening the case: "I think, having regard to the statement of The MacDermot, it is only right on my part to say that an acknowledgment of guilt and submission to the law are matters which have always been to some extent considered in the punishment inflicted."

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\* Now a distinguished Judge.

entailed upon the members of his flock by his resistance.

Although Father McFadden escaped sentence, he received ample punishment. His parishioners resented that he, for whom crime had been committed, should go free while others suffered. A feeling of hostility sprang up amongst his flock, and eventually he had to leave his parish.\*

\* The Gweedore trial was very painful and distressing for my father. He had to prosecute a minister of his own religion, and the courageous discharge of this most painful duty brought down upon him the most virulent abuse from those who sought to stir up the evil passion of bigotry for political purposes. In December, 1888, my father was appointed Lord Chief Justice of Ireland, and on the 11th of January, 1889, took his seat upon the Bench. Not the least pleasing feature of his appointment was the many kind congratulations he received—at a time when party feeling ran high—from those who differed from him in politics. In 1891 he was created a Baronet, and in 1900 he was raised to the peerage.—EDITOR.

## CHAPTER XVII

### HUNTING RECOLLECTIONS

SOME years after my elevation to the Bench, we moved to Castletown House at Celbridge, where we were within easy reach of Dublin, and where I could get some hunting. Once more I could indulge in my favourite pastime in a mild way, getting out sometimes on a Saturday, when the Courts were not sitting. I had an excellent hunter—a nice-looking cob, which I afterwards sold to Sir Edward Carson as a Park hack. “The Cob”—the horse was never known by any other name—was an excellent fencer, and had the bravest of hearts. I remember that one day when I was holding quite a good position in a hunt, over a nice country, we suddenly came, to my dismay, to a huge yawner, a formidable obstacle in the shape of a nasty, deep ditch. We were going fairly fast at the time, and I did not at all like the look of the barrier between me and the hounds. I tried to stop my horse, but he meant to have the fence regardless of my wishes, and would not stop, so I screwed up my courage, gave him his head, and he negotiated the fence most dexterously. I turned round to look back at the obstacle with complacency. A priest on horseback was at the far side. He was standing in

his stirrups taking stock of the fence. "Sir," he called out to me, "will you be very kind and ride my horse over this for me?" With much courtesy, I doffed my hat to him and said: "Reverend sir, you are presumably better prepared for the next world than I am; therefore, I must ask you to excuse me risking my neck a second time." Whereupon he regarded me with no very pleasant countenance as I rode on gaily.

Frank Goodall was huntsman in those days, and an excellent huntsman he was. When I first took up my abode at Castletown, Major Moore was Master of the Kildare hounds. He was succeeded by Colonel de Robeck—the son of that excellent and much-loved sportsman, Baron de Robeck, affectionately termed the "Old Baron," who was to be seen, almost until the day of his death, in the saddle in all weathers. From Castletown we very occasionally had a day with the Meath hounds. John Watson was Master then, and, as keen as mustard, he lived for hunting. In his eagerness for sport, he was apt to grow very much excited, and, if his foxes were headed, his language was something at which to marvel. It was said that his evenings were spent in writing apologies to those whom he had offended during the day. I told him that when I was out hunting with the Meath hounds, he once *looked* in my direction, which so frightened me that I galloped straight back to Castletown, where I did not feel out of reach of his tongue until I had ensconced myself upon the

roof ! This fiction delighted him. Nobody has ever cherished resentment against him for long. During the chase he was a privileged person, inasmuch as he was such a gallant sportsman, and so desirous that those out with his hounds should enjoy good sport. One day when the Meath hounds were hunting not far from Castletown, the fox crossed the road and was lost, greatly to the annoyance of the Master, who thought he was likely to have a good run. His anger was terrible to witness. Longing to give vent to his disappointment, he espied a trap upon the road, wherein was seated a lady gaily and fashionably attired in bright scarlet. John Watson held her responsible for heading the fox. Turning towards the field, he said in stentorian tones: "Ladies and gentlemen, you have to thank the Scarlet Woman for spoiling your day's sport !" Everybody felt amused at this outburst, but nobody dared to laugh.

## CHAPTER XVIII

### A JUDGE'S DUTIES—A NARROW ESCAPE—SOME WITNESSES

I HAVE always thought that a Judge is deserving of much sympathy when it falls to his lot to discharge that most painful of all tasks—namely, sentencing a fellow-being to death. Happily, during my twenty-five years on the Bench I have had to pronounce but few death sentences, and all of them were in cases in which the crime was of a terrible and deliberate nature—a fact which, to a slight extent, tends to deaden feelings of pity for the criminal.

Once I had to sentence a man to death for the brutal murder of his wife. He was living with another woman, and, in order to marry her, wished to get rid of his wife and mother-in-law. He killed them with the blow of a spade while they slept, and, locking the door of the room in which his two small children also slept, tried to make his escape. The terrified children were for over twenty-four hours locked in with the dead bodies. Their father intended to leave Ireland, but was arrested before he could get aboard a vessel. Had he not taken some of his possessions with him in a tin box he might have escaped.

At the trial witnesses swore that they had seen a man walking at a great speed along the roads on the day of the murder. Some of them could not recall the prisoner's features, but all were unanimous in swearing that the man carried a tin box. When I assumed the black cap to pronounce sentence of death, the prisoner cursed me in the most dramatic manner, but the day before the execution I received a letter from him in which he begged me to forgive him for the language he had used towards me, and, with many expressions of contrition for his crime, admitted the justice of his sentence.

I remember trying a "horse case" in which evidence was given as to a jockey having pulled a race-horse so as to prevent him passing the winning-post. His guilt was established beyond a doubt, and I was amused to hear that his sole comment on the case was, "Who got at the Judge? How was he got at, and how much did he receive?"

I once had a narrow escape from death while in the discharge of my duties as Judge. A missile in the shape of a stone about the size of a hen's egg was flung at me from the dock by a prisoner, and was within an ace of hitting me. The occurrence took place at Belfast, where a man who had been a soldier was charged with burglary and found guilty. While I was sentencing him to two months' imprisonment he bent down, and, taking a stone which he had concealed in his clothes, flung it at me. It



fell somewhere at the back of the bench. How the prisoner came to be so armed puzzled us all. On inquiry, it was discovered that on his way from the cells he had to go through a long subterranean passage paved with cobble-stones, one of which he had managed to pick up, evidently with the intention of flinging it at the Judge should a verdict of guilty be brought against him. Ever since this ugly incident prisoners are always carefully searched before being placed in the dock.

I recollect two rather amusing instances of the readiness of witnesses to reply to questions the import of which they wholly misunderstand.

In a Probate case before me the question arose as to whether a testator who made a will twenty-four hours before his death was, at the time of his so doing, mentally capable. The evidence showed that the deceased was visited on the day preceding his death by several of his neighbours, who described him as being more or less in a state of stupor and collapse. I put the question to one rather voluble witness at the end of his evidence: "I gather, then, that the deceased gentleman, when you saw him, was lying in a coma?" "Oh no, my lord," he replied without hesitation; "it was just an ordinary bed he was lying in."

The other story is of the same nature:

A Dublin dock-labourer alleged that he had been attacked by a lascar who had come from his native India as stoker on board a steamer berthed for the



## CHAPTER XIX

### LORD JUSTICE FITZGIBBON

No wonder the Irish Bar is proud of its past glories, when it can boast of having had among its members such men as Curran, Whiteside, Bushe and Butt; in more recent years surely its glorious traditions have in no wise been unworthily sustained. As I write, the names Naish, Fitzgibbon, Palles, come to my mind all unbidden.

Lord Justice Fitzgibbon was one of our most eloquent and erudite judges. His career, when at Trinity College, was most distinguished. His mind was extremely subtle, and he generally formed his judgments through a strange process of reasoning. It was impossible to predict what view of a case he would take, and the ordinary judicial mind often found a difficulty in following his mental windings and twistings.\* He possessed a wonderful knack,

\* It must not be thought for one moment that Lord Justice Fitzgibbon was a trimmer. He was ever good-humoured and willing to temporise for peace' sake.

A friend of ours wanted to see him on important business, and called at his house in the morning, when he knew he was most likely to find the Lord Justice at home. The Lord Justice himself met him in the hall, and said: "I am sorry, but I absolutely cannot speak with you now. It is nearly eleven o'clock, and I must be in court by eleven o'clock."

which amounted to a gift, of presenting his own view in the most convincing manner.

He had, if I may use the term, an acrobatic mind. He was the most delightful of hosts, and every Christmas gave parties at his charming residence, which overlooked the sea at Howth. Many distinguished people enjoyed his hospitality, and one reason which made these gatherings so pleasant was that he himself thoroughly enjoyed having his friends around him. He was like a schoolboy during the Christmas vacation, when these famous gatherings took place, of which oysters, wine, good conversation, good company, and long rambles round the beautiful coast, were the distinguishing features. The last time I enjoyed Fitzgibbon's hospitality, I had to leave by an early train in the morning. It was a foggy, pitch-dark morning, and I had to grope about the passage in search of my boots, as I did not want to disturb the other guests at such a cruelly early hour. I had not been home very long when a mock warrant for my arrest arrived. It was sent by Fitzgibbon, and was worded in legal phraseology to the effect that I

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"Oh, I shan't keep you long. Do give me a few minutes," urged my friend.

"Impossible. The Roman Catholic Archbishop of Dublin is in my study at this moment. I must see him on some educational matter before going to court."

"Well, I'll slip up to the drawing-room and wait for you there."

A strange look stole over the Lord Justice's face, as he answered: "You mustn't go into the drawing-room: the Protestant Archbishop is there, and neither knows the other is here."—EDITOR.

had stolen a boot, the property of the Right Hon. George Wyndham, Chief Secretary of Ireland, and that I had been seen limping at Kingsbridge Terminus with the aforesaid boot upon my foot. In the dark I had by mistake taken from the landing one of Mr. George Wyndham's boots, whose room was next to mine. I had noticed at the station that my foot felt very hot and uncomfortable, but this I attributed to gout, the result, as I thought, of Fitzgibbon's lavish hospitality.

## CHAPTER XX

### SUCCESS AS A MATCHMAKER

ONCE, and once only, my advice was instrumental in bringing about a marriage, though, to my regret, I never met the lady concerned. I was in Wales for a short holiday, and one day was going by train to Llanberis with the view of ascending Snowdon. A young man—a barrister as I thought—was travelling in my compartment. After a time we began to converse, and I found that my surmise was correct, as he told me he had left Oxford, and had been called to the Bar. He was an intelligent fellow, and most eager to succeed in his profession. We discussed legal topics, and I gave him some advice which I deemed might be beneficial to a young barrister. As we found each other's society congenial, we arranged to ascend Snowdon together, and when we reached the summit, my young friend grew pensive and heaved a sigh, whereupon I chaffed him on the possession of a romantic temperament. The beauty of the scene may have moved him to give me his confidence, for before many minutes had elapsed he was asking my advice concerning his love affairs, which were causing him great perplexity. It was a case of "How happy

could I be with either, were t'other dear charmer away!" for there were two ladies, and he could not make up his mind to which to propose. One was extremely pretty and well endowed; the other dowerless, and, to quote my young friend, "an angel," having nursed an invalid and querulous father through a long illness, denying herself all amusement to take her place by his pillow. I advised him to marry the dowerless young lady, saying that, inasmuch as she had proved such an excellent daughter, she would be likely to prove an equally excellent wife, and stand by her husband as she had done by her parents. I told him that under such circumstances, even without money, he would probably succeed at the Bar, as most men who had risen to fame had had to work hard in the beginning. My young friend seemed impressed by my advice, and when I had finished speaking, suddenly exclaimed, as he pointed to a lady who appeared on the scene: "Why, there's the pretty girl I was telling you of." Very pretty she certainly was. She had ascended Snowdon with some friend, and was delighted to meet the young barrister. She was very gracious and charming to me, and I felt rather a traitor in her presence, owing to the advice I had just given. The episode was soon almost forgotten by me, and my thoughts might never have reverted to it, had I not many years after received a letter from the barrister, in which he recalled himself to my memory and thanked me for my advice, which he had followed, with the result that he was

“ happy in his marriage beyond his expectation,” and was making a large income at the Bar. My success as a matchmaker much gratified my vanity, but I was content to retire on my laurels, knowing that I could never again hope for a like success, inasmuch as “ angels ” are rarely to be met with.



## CHAPTER XXI

### ON LITERATURE

ON the 18th of May, 1911, I was present at a dinner in aid of the Royal Literary Fund, which was held at the Whitehall Rooms, Hotel Metropole. That distinguished man of letters, Mr. Birrell, presided—and in a weak moment I was persuaded to propose the toast of Literature. Had I not had the audacity to do this I should have foregone a very pleasant evening, during which some excellent and amusing speeches were made. When dinner was over, and feeling exceedingly conscious of my own shortcomings, I made the following brief speech, in the beginning of which I tried to illustrate my utter destitution from a literary point of view by relating this little story:

“ At an early table d’hôte at one of the hotels in Lucerne, I think it was the Schweitzerhof, I found myself sitting next to a very charming Russian lady. Her children were seated near her, and were conversing in all manner of languages. I remarked to the mother, ‘ What a number of languages these charming children speak ! ’ The gratified mother turned to me, and looking at me—not wholly without interest, as I thought—asked me whether I was not

a good linguist. 'Alas, madam!' I replied, with tears in my voice, 'I do not speak even the language of my own country.' You can well imagine, my lords, ladies, and gentlemen, the mental prostration with which I made this humiliating avowal!"

I then went on to say that, notwithstanding my entire ineptitude, literature had afforded me so many delightful moments that a spirit of gratitude suggested that I should endeavour at least to lay a very humble tribute at its shrine. "What has literature done for us? Or, rather, what has it not done for us?" I asked. "For my own part, but for literature I should still be careering about my native wilds, a semi-civilized backwoodsman. What Englishman is not proud of the literature of his country? What Englishman does not feel a glow of pride when he remembers that it was England that gave to literature Shakespeare, Milton, Chaucer, Spenser, and a thousand other imperishable names of both men and women?"

"My lords, ladies, and gentlemen," I continued, "I have but one complaint to make against literature. The occasion which gave rise to this complaint was certainly a very trying one. I remember at one time I was on circuit in the West of Ireland, and, with my colleagues, was asked to attend a public dinner. 'Literature' was on the toast list, and a local orator—a Connaught gentleman, I believe—was called upon to propose it. This gentleman apparently prided himself on his knowledge of literature, and certainly loved the sound of his own

voice. He spoke with an unrelenting fluency for three hours and thirty-three minutes by the clock. It was marvellous, if not magnificent. There is a saying in the West of Ireland with which Mr. Birrell is, no doubt, familiar; it is heard in times of civil commotion: 'The West's awake'; but I assure you, my lords, ladies, and gentlemen, that on this occasion the West was fast asleep!"

I then ceased my bizarre and uncouth references to literature, and presented a delightful contrast by associating with the toast of "Literature" the name and fame of Sir Arthur Quiller-Couch, whose health I proposed.

## CHAPTER XXII

### USSHER *v.* USSHER

PERHAPS the most interesting case in which I had to deliver judgment in recent years was that of *Ussher v. Ussher*.\* The facts are briefly as follows: It was argued that a marriage ceremony celebrated between two professing Roman Catholics was null and void on account of the omission of a certain formality, not considered essential by the established Church—that is to say, by the law of the land. It was of paramount importance that the law of the land should be upheld, and, as naturally the case was followed with considerable interest, I do not hesitate to give it in full.

The question to be determined in this case is whether the Petitioner William Arland Ussher and the Respondent Mary Ussher, otherwise Caulfield, were lawfully married. The material facts are as follows:

At about ten o'clock at night on the 24th of April,

\* This judgment seems to have given universal satisfaction, inasmuch as my father was the recipient of numerous congratulatory letters from prominent Catholic and Protestant ecclesiastics.—EDITOR.

1910, the Petitioner went through what purported to be a ceremony of marriage with the Respondent. Both the Petitioner and the Respondent were Roman Catholics at the time of the alleged marriage; upon this hypothesis the Petition was presented. The ceremony which is impugned as invalid was performed by the Rev. Joseph Fahy, parish priest of the parish where they resided. The Petitioner lived at a place called Eastwell in the county of Galway, and the Respondent was a housemaid in his establishment. The Petitioner was about thirty years of age and the Respondent about twenty. The Petitioner had been born a Protestant; and had, up to the date of the ceremony, professed the Protestant religion; but immediately before the alleged marriage took place he had been received into the Roman Catholic Church.

The marriage ceremony was performed in accordance with the ritual, so far as it is expressed in words, of the Roman Catholic Church, but in the presence of one witness only—a woman of the name of Agnes Kavanagh, who was a cook in the Petitioner's house. It appears that both the reception into the Roman Catholic Church and the ceremony of marriage took place in an unused bedroom at Eastwell, into which the Rev. Joseph Fahy was secretly introduced at night by the Petitioner.

It was argued before us that this marriage was invalid by reason of the fact that only one witness thereto was present, and that it was invalid ecclesiastically and legally, both in the eye of the Roman

Catholic Church and in the eye of the law of the realm, the common law. The prohibitive and penal statute, the 19th Geo. II., cap. 13, was referred to as invalidating the marriage.

There was an added, I might say a special ground of impeachment of the marriage: it was alleged to be subject to the condition that, if the ceremony which was gone through was not effective as a valid marriage in the eye of the Roman Catholic Church, it was to be regarded as altogether invalid. The Rev. Joseph Fahy, who was examined at the trial, stated that he told the Petitioner (who was not produced to give evidence) that two witnesses to the marriage were necessary; but afterwards alleged that he thought that a faculty which he got from his Bishop, the Most Rev. Dr. Gilmartin, dispensed with the necessity of two witnesses, and rendered the presence of one witness sufficient. As to this, the Rev. Joseph Fahy lapsed into very great confusion. It is not now denied that the faculty from the Bishop was confined merely to the authorization of the celebration of the marriage in a private house. The marriage certainly took place before but one witness, Agnes Kavanagh the cook. The persons present were only four in number—viz., the Petitioner, the Respondent, the cook Agnes Kavanagh, and the Rev. Joseph Fahy. The ceremony of marriage was, as I have stated, gone through in the words (all the words having been used) of the Roman Catholic ritual. Did the fact that there was but one witness present

invalidate the marriage from the standpoint of the Roman Catholic Church? In my opinion it did. The Decree of the Council of Trent has been promulgated in Ireland; it is applicable to and controls Roman Catholic marriages, and makes the presence of two witnesses necessary. A ceremony not in accordance with its requirements as to the presence of a priest and of two witnesses is null and void. Not only is the marriage declared null and void by the Council of Trent, but the parties purporting to contract are declared incompetent to do so, "*omnino inhabiles ad contrahendum.*" That is to say, the marriage is rendered invalid not by reason of any incompetency of a personal character attaching to, inherent in, the persons purporting to contract, but by reason of the non-compliance with an external requirement; that is to say, the presence of the two witnesses rendered necessary by that Decree. It must be borne in mind that the Decree of the Council of Trent, though coercive and conclusive from the standpoint of the Roman Catholic Church, is not recognized by the law of the land, the common law. We must bear this distinction in mind when dealing with the question whether the marriage with which we are here concerned was good at common law. It is unnecessary to consider how, from the point of view of the Roman Catholic Church, a subsequent validation of the marriage would operate; for no such thing has taken place in this case, nor has any such thing been attempted; in fact, the Petitioner refused to

give the consent said to be necessary for such validation.

But, as was asked with much emphasis by Counsel during the argument, how could the marriage be validated if it was altogether void? Such a proposition, it was contended, finds no support from "reason." I am afraid there are many things lying at the root, at the foundation of the Christian religion, mysteries of faith, for an elucidation of which we should appeal to "reason" in vain. The incredulity of scepticism is caused by making "reason" the sole and exclusive touchstone of faith. One thing, however, "reason" imperatively impresses: that, such are the difficulties which beset every form of the Christian religion, we should, no matter how great our devotion to the faith of our fathers, practise forbearance and toleration towards all men within the Christian fold, whatever their distinctive tenets may be. I should not have made these observations but for the argument so vigorously addressed to us from the Bar; it is sufficient for me to say that the Decree of the Council of Trent, which has been promulgated in Ireland and forms part of the Roman Catholic Faith, declares a marriage with but one witness to be null and void.

I now turn from the law of the Roman Catholic Church to the law of the realm, the common law. What, then, is a common law marriage? Marriages that were made without formalities, but by the mere consent of the parties, were at one time regarded by



many as common law marriages. In order to have made such marriages effective there should have been a present intention to make the contract, and it should have been expressed accordingly; in other words, "per verba de præsenti." This was accepted by many as the true view of the essential conditions of marriage at common law before the well-known case of *Regina v. Millis*; it rested on the maxim "Consensus facit matrimonium." Then came the case I have mentioned, that of *Regina v. Millis*, which exhausted legal erudition on the subject, but in which the noble and learned Lords who heard it were equally divided in opinion as to whether the presence of a clergyman in Holy Orders was essential to the validity of a common law marriage. Next we have the equally well-known case of *Beamish v. Beamish*, in which the House of Lords showed that, by virtue of the rule "Semper præsumitur pro negante," the decision in *Regina v. Millis* made the presence of a clergyman in Holy Orders necessary to the validity of a common law marriage. See Lord Campbell's judgment, pages 336, 339 (9th H.L.). He dealt with the matter at some length, and concluded his observations as to this head of his argument by saying:

"It is my duty to say that your Lordships are bound by this decision (*i.e.*, the decision in *Regina v. Millis*) as much as if it had been pronounced *nemine dissente*" (p. 338). Later on he says that it was "settled by that case that, to constitute a valid

marriage by the *common law* of England, there must be present a clergyman in Orders conferred by a Bishop." Lord Chelmsford is also reported to have said in the same case: "The Queen v. Millis must be taken to have settled that at *common law* marriage was invalid unless contracted in the presence of a priest in Holy Orders"; and, to refer to the antecedent judgment of Lord Cranworth, it will be seen that he laid down that "according to the common law of England and Ireland a marriage celebrated without the presence of a clergyman in Holy Orders was not merely irregular, censurable and punishable, but was absolutely void."

Now, why do I refer to these passages from the judgments of these noble and learned Lords? For this reason: that they deal with the law of the land, the common law; and because the Rev. Joseph Fahy, as has not been denied, fulfils the necessary conditions as to being a priest in Holy Orders. The substance, the essential condition, of a valid marriage at common law is what we have here. The contracting parties intending then and there to get married interchanged their mutual consent—the one to be husband, the other to be wife—in the presence of a priest in Holy Orders. By the word "priest" I mean not a mere physical sacerdotal entity, but a clergyman present to elicit and receive the consent of the contracting parties; to see that they intended to get married and mutually understood each other, and who might act as a witness of the marriage, if

necessary. Here not only were "verba de præsentī" used, but, as I have already stated, the whole of the Catholic Ritual, so far as it is expressed in words, was gone through. There was here the essence, the substance of a common law marriage, clothed, as it were, in ecclesiastical garments. I find that in treatises on marriage law the priest is styled "the official witness," the "testis qualificatus." At common law the presence of any other witness was unnecessary to constitute a valid marriage. Other witnesses who might have been present, but whose presence, though essential under the express provisions of the Council of Trent, was not essential at common law, were styled the *formal* witnesses. I am therefore of opinion that there was a good and valid marriage according to the law of the realm, the common law, between the Petitioner and the Respondent. It is not necessary to refer to those exceptional circumstances, such as the celebration of a marriage at sea, or a case in which it is impossible to secure the presence of a priest, mentioned by Lord Cranworth in *Beamish v. Beamish* at page 348, and by Lord Wensleydale at page 352, of their respective judgments, and in the Decree "*Ne temere*," which dispense with the necessity for the presence of a priest; such circumstances do not exist in the present case. Before I leave this part of the case, I desire to refer to the Report made on the Marriage Law of the United Kingdom dated 1868; perhaps the most authoritative Report (whether in regard to the

position and qualifications of the signatories to it or of the witnesses examined before them) that was ever presented to either House of Parliament. Amongst the signatories were five Lord Chancellors, four English and one Irish; and among the witnesses were several Roman Catholic Bishops, both English and Irish. The division under the head of "Roman Catholic Marriages" consists of six short clauses, so succinct that their very succinctness causes me some compunctious visitings lest my observations be too great a trespass on the public time. All these clauses are relevant, but I will refer only to Clauses 1 and 6, which are as follows:

"*Clause 1.* Until the year 1863 marriages between two Roman Catholics (being the great majority of the whole number of marriages annually solemnized in Ireland) were left to the operation of the common law, without any statutory enactment; and, so far as relates to the legal constitution of marriage between such parties, this is still the case; the provisions of the Act passed in that year being directory, with a view to the registration only of such marriages."

*Clause 6*, after referring to the Council of Trent, the publication of banns, and dispensation with them by episcopal licence, continues as follows:

"Of these matters, however (being requisites of marriage by the internal economy only of the Roman Catholic Church), the law of the land takes no cognizance; and *a marriage contracted in the presence of any Roman Catholic priest in Ireland between two*

*Roman Catholics, although contrary to the law and discipline of their own Church, would be legally valid."*

My brother Kenny most appropriately referred to these among other clauses of the Report; but there is one other antecedent clause, at page 3 of the Report, to the concluding lines of which, as I think them apposite, and entirely right, I shall refer. They are as follows:

"In both countries (England and Ireland) provision is made for a general registry of marriages with a view to their greater publicity and more authentic proof; but the validity or proof of marriage is not made dependent upon such registration or upon any other particular kind of evidence."

Now I come to what I called the added, the special, objection, which was so strenuously pressed at the Bar. Herein lay indeed the stress of the contention between the parties. It was said that the ceremony proceeded on the basis that the consent of the Petitioner was given upon the condition that if the alleged marriage was not a good marriage according to the doctrine of the Roman Catholic Church, the ceremony gone through should be regarded as in no way binding, and that the Petitioner should not be regarded otherwise than as an unmarried man; that the ceremony he went through should be good and binding as a valid marriage in the eye of the Roman Catholic Church or be no marriage at all. That, as it were, he should be bound only by the tie he purported to put on; that, in fact, if not bound by that

tie, it would be competent for him to sling the Respondent aside as a degraded castaway, the mere refuse of his sated passion, and the unhappy mother of a bastard child. This gives us pause indeed.

But it is said that hard cases make bad law; and we must accordingly be careful that any moral reprobation this contention may provoke does not blind us to the facts or to the law.

Was there then, in point of fact, any such condition as was argued to exist? Was there, to use the language of the fourth paragraph of the Petition, any such *express* condition? I am of opinion that there was not. There was in my opinion no such stipulation either express or implied. I think the substance, the essence of the marriage was constituted by the affirmative answers given to the questions of the priest: by the mutual consent elicited by these questions. I think the Latin word "vis" is equivalent to "Do you consent?" and the word "volo" to the words "I do"; and that all the rest of the formula is merely declaratory, confirmatory, symbolical, and ceremonial. If this be so, as I think it is, there was an absolute unconditional contract of marriage; and this view is, I think, borne out by the "Roman Ritual," which consists merely of the affirmative answers given to the priest. The questions and answers are in language identical with the language, the questions and answers put in this case. But assuming this view, though supported by the opinion of many eminent Canonists, not to be the true view;

and assuming that the substance, the essence of the marriage is to be found later on in the formula used, I think the words, "*verba de præsenti*," words used in the present tense according to the directions given in the Prayer-Book, "I take thee to my wedded wife," etc., and "I take thee to my wedded husband," etc., used respectively by the contracting parties, would be a sufficient expression of their mutual consent to constitute a marriage. This seems to have been the opinion of that most distinguished Judge, Sir James Willes. See his great judgment in *Beamish v. Beamish*, upon which the language of eulogy was exhausted.

But whatever opinion may prevail (and I most studiously, most emphatically disclaim even the semblance of dogmatism) as to where the essential words lay in the formula before us, I think there was cumulative evidence of mutual consent regarding the formula as a whole. This is, I think, sufficient for the purpose of my judgment; but I think it may with some plausibility be argued, as indeed it was, that what follows the mutual acceptance in the latter part of the formula—the mutual "*taking*," so to speak—was not essential to the constitution of matrimony, but represented merely the duties and functions attaching to Christian marriage; and that the troth-plighting had reference merely to the discharge of these duties and functions. The expression "*Ego conjungo vos in matrimonium*" was not, in my opinion, essential. It was used merely to give

a religious character to the ceremony; to indicate that the *official* witness, the witness who attended on the part of the Church, saw nothing wrong in the ceremony; and the crossing of the right hands, and the blessing, and the giving of the marriage-gifts were merely symbolical. The true view, presented by the actual position as it existed at the time of the ceremony, as I ventured to point out during the progress of the argument, was that the Petitioner not only consented to be married to the Respondent, but was most eager and desirous to be married to her; to have the marriage then and there secretly celebrated by the Rev. Joseph Fahy. He was, as I have said, equally urgent to get married and to have the marriage kept secret. The Rev. Joseph Fahy may perhaps in his hurry and confusion have confounded the *official* witness, the priest, with the *formal* witness; that is to say, he may have regarded himself as one witness, and Agnes Kavanagh the cook as another; but most certainly the clandestine method of the celebration of the marriage was much to be regretted.

I think I may here appropriately quote a passage from the judgment of Lord Chelmsford in the case of *Beamish v. Beamish* as to the effect of a clandestine marriage. He says at page 357 of the report:

“But where such a contract ‘*per verba de presenti*’ was declared in the presence of a person in Holy Orders present for the purpose of receiving such declaration, there was a *complete and valid*



marriage, although in consequence of not taking place 'in facie ecclesiæ' it was considered as clandestine and subjected the parties to the censure of the Church. These marriages, however, were regarded by the ecclesiastical Courts as complete and lawful marriages, and *so they were by the Courts of common law*, and as drawing after them all the legal rights and consequences incident to marriage; nor were the parties ever compelled to repeat the ceremony in the face of the Church; all which is clearly explained by Lord Lyndhurst in *Regina v. Millis*." This is the language of Lord Chelmsford.

But to return to the allegation that the marriage was conditional. There certainly was nothing conditional in the questions of the priest, nor in the answers of the Petitioner. The answer that the Petitioner would marry according to the rite of the Church meant simply that he was willing that the Roman Catholic ceremonial should be adopted; it did not in any way qualify his intention to get married; it simply meant that he was willing that the Roman Catholic ceremonial of marriage should be employed; a ceremonial of marriage which was, in my opinion, in no way of a conditional character.

The words "If Holy Church will it permit" were at most no more than this, that the marriage should be regarded as binding and valid if nothing was discovered to exist affecting the personal relations of the contracting parties (such as consanguinity or affinity) to justify their separation in the eye of the

Church, and require dissolution of the marriage bond. For my own part, I think that these words had no reference to what I have described as an external witness, the necessity for whose presence was created by the ordinance of the Council of Trent. Indeed, these words are found in rituals which were in use long before the ordinance of the Council of Trent was promulgated or even existed.

I think, too, that it may be very plausibly argued that these words, which occur after the statement of the obligations and duties of marriage—at the end of the habendum, so to speak—are but a vague expression of deference to the Church, similar to the analogous expressions “Please God,” “If it please God,” “With the blessing of God,” “God willing.” Indeed, in our own courts we constantly hear the phrase “If your Lordship pleases”; and in the House of Commons members not infrequently make use of the formula “With the permission of the House.” These phrases are accepted as mere expressions of courtesy, and are in no way restrictive of exhaustive argument or elaborate discussion. The mere occasional use of these words (for they are found only in some of the rituals) tends to bear out the view that they are, as I have said, a mere vague expression of deference to the Church. They are altogether omitted in some of the rituals. For example, they are not found in the “Roman Ritual,” nor in the ritual which is in use in America; and in the old Sarum Ritual other words are employed. Nor are

the words found in the York Missal; while in the Hereford Manual and Missal the words are "as Holy Church has so ordained." Such words do not, in my opinion, make the marriage conditional; they do not qualify the absolute character and effect of the mutual consent already given in the presence of the priest. The interchange of consent and the intervention of the priest created in a legal point of view the contract; and from an ecclesiastical point of view conferred the sacrament of marriage. The consent should be freely and deliberately given without error, fear, or force, duress or fraud, by persons competent to contract; and should be expressed in words or by some visible sign. All these conditions were fulfilled in the present case.

Though a priest be present, it is, in the language of a distinguished Canonist (Devine on "The Law of Christian Marriage," page 57), "the well-settled doctrine of the Roman Catholic Church that the contracting parties are themselves the ministers of the sacrament, and not the officiating priest, who only confirms and blesses the marriage, and can only be called the minister of its solemnity." This ratification and blessing was, I think, intended to be expressed by the phrase "Ego conjungo vos in matrimonium." The priest, notwithstanding the form, the literal import of the words, does not unite in matrimony; the marriage union is not created by him; he merely expresses approval on the part of the Church of what has already taken place. This

expression “Ego conjungo vos in matrimonium” relates to and is conversant with the ceremonial, with what is non-essential, with what is merely ceremonial and symbolical, and not with the essence and substance of matrimony; the marriage has already taken place by the interchange of mutual consent, “per verba de præsenti,” in the presence, and with the intervention, of the priest. And the fact that the marriage union has been already effected should be borne in mind when construing the words “if Holy Church will it permit.” These words occur after an absolute marriage has taken place, and, in my opinion, do not qualify it.

With reference to the presence of a priest, Lord Wensleydale in his judgment of *Beamish v. Beamish* (page 350) says:

“The elaborate opinion of the consulted Judges which has been delivered to us by Mr. Justice Willes gives very ample and satisfactory reasons why the presence of a third person, a clergyman, should be required. They suggest that there must be three reasons for requiring his presence: First, that it may be that he is to be a representative of the Church, for the purpose of giving a religious character to the ceremony, and invoking from the Almighty a blessing on the union, for that is the only sense in which a blessing can be given by human lips. Secondly, that he must be present as a trustworthy witness to the contract, to see that the parties to it fully understand each other, that they really mean to contract and

take each other from that time for husband and wife, and to bear witness thereafter to others to that fact. Thirdly, that he has a power to prevent the marriage from taking place, if a just impediment is brought to his knowledge, such as consanguinity or affinity within the prohibited degrees."

Here was no impediment as regards consanguinity or affinity. The parties fully understood each other; and the priest purported to pronounce a blessing. Whatever the conduct of the Rev. Joseph Fahy was, he was present, he saw what was going on, and was therefore competent to give evidence of the marriage. And since the ceremony took place nothing has supervened to invalidate the marriage.

But, as to the so-called conditional contract, can it be now successfully contended, after the marriage has been consummated and a child born, that the condition any longer subsists—subsists for what? To make a concubine of the wife, to show that she has lived in a state of concubinage, and that the child is illegitimate. Such a condition, if it ever existed, was certainly put an end to by the consummation of the marriage and the birth of a child. The Petitioner must, under such circumstances, be taken in the eye of the law to have renounced any such condition.

But could such a condition be at all valid and binding? I am careful not to refer to a marriage "*per verba de futuro*." There may be, I think, a conditional contract in this way. A man and a

woman may contract to be married after the lapse of a certain time on condition that the father of the woman provides at that future time a fortune agreed upon, say £10,000. If that sum was not produced at the time agreed upon the contract could not be enforced. But take the case of a marriage "*per verba de præsenti*," which gives an immediate right to cohabitation and consummation; can such a marriage, consistently with the existence of such a right, be made subject to defeasance?

But more especially, can it be subject to defeasance if the right to cohabitation and consummation, as in this case, has been exercised? Such a condition would, in my opinion, be invalid as opposed to public policy, which favours the unity of the spouses as preservative of morality, and also the procreation and upbringing of children within the marriage bond.

But how did the contract become conditional? I take it that in order that a contract be conditional the condition must be present to the mind of the maker when the contract is being made. Can it be said that the Petitioner knew anything about the words "if Holy Church will it permit" till long after the ceremony had taken place? These words are not referred to in the Petition; and it is only some time after the acute professional mind had been brought to consider the matter that any reference was made to them. They appear for the first time, so far as the pleadings are concerned, in the reply. I think

it is quite clear that the Petitioner never, consciously at least, made a conditional contract.

But let me refer to what I consider supplies an analogy. According to Canon Law, a marriage "*ratum et consummatum*" is indissoluble. (See Devine on "*The Law of Christian Marriage*," page 92.) Here, no doubt, in the eye of the Church the ceremony did not amount to "*matrimonium ratum*"; it was not properly contracted, as the essential condition of the presence of two witnesses was not complied with; but there was a good contract at common law "*per verba de præsenti*" in the presence of a priest, and this was followed by consummation. Certainly the marriage that was celebrated was attended by the result that there could be no "*restitutio in integrum*." And it is not pretended, or in any way suggested, that there was on the part of the Respondent any misconduct which would justify divorce—in this country separation "*a mensa et toro*," or in England divorce "*a vinculo matrimonii*."

One remaining topic. At the time the Report on the marriage laws was made, the 19th Geo. II. was still in existence, and rendered, as we know, the marriage by a priest of two Protestants or of two persons, one of whom had been or had professed himself or herself to be a Protestant at any time within twelve months of the alleged marriage, null and void; but this Act was repealed many years before the marriage with which we are now concerned took place by the 33rd and 34th Vict.; and the repealing

Act left Roman Catholics subject to no statutory disability as to a contract of marriage between themselves. It will be remembered, as I pointed out in the earlier part of my judgment, that the Petition in this case was presented on the hypothesis that both Petitioner and Respondent were Roman Catholics. (See par. 1 of the Petition, and par. 2 of the Petitioner's affidavit, where it is alleged that both Petitioner and Respondent were Roman Catholics at the time of the ceremony of marriage.) And the last section (sec. 42) of the 33rd and 34th Vict., which provides that that statute and the 7th and 8th Vict. should be read together and construed as one Act, removes all the difficulty which was alleged to attach to the third section of the 7th and 8th Vict.; because, there being no limitation of time as to the profession of Protestantism existing at the moment when the marriage took place, the Petitioner and Respondent were then free to contract as Roman Catholics: a marriage could legally be celebrated between them. I am accordingly of opinion that the marriage which took place between the Petitioner and the Respondent was a valid marriage according to the law of the realm, according to the common law, and that the Petition should be dismissed with costs.





## BY THE EDITOR

### CHAPTER XXIII

EXPERT WITNESSES—SERJEANT ARMSTRONG—LORD RUSSELL—  
MR. GLADSTONE—LORD O'HAGAN

THE last time my father discussed this book of reminiscences with me he said: "See that my judgment in the *Ussher* case is fully included, inasmuch as it attracted a good deal of interest on account of the recent Papal decree '*Ne Temere*.'" *Ussher v. Ussher* was the last judgment of importance he gave; his resignation took place shortly afterwards.

He prepared his judgments very carefully, and worded them in concise and simple language so that they could be easily followed by those unversed in legal subtleties or in legal phraseology.

I think he attached very little importance to the testimony of experts, were they experts in handwriting or anything else. I was present in court when he was trying a case in which a thief had broken into a house and taken a number of valuable things, leaving as a clue to his identity finger-prints on a dusty bottle.

These finger-prints were photographed, and an expert gave evidence as to the vertical finger lines

on the bottle being identical with the vertical lines on the prisoner's fingers. The expert went on to say that, in his opinion, the vertical lines on people's hands were always different. My father, with an air of incredulity, asked the witness if he would undertake to swear that, among millions of people in the world, no two human beings could be found with identical finger lines.

On one occasion he had to try a case the issue of which depended on the exact meaning of a word in the Irish language. The services of a professor of Irish, who had written several books in the Irish language, were enlisted, yet he did not speak or understand what the Irish peasant so aptly calls "cradle" Irish—that is to say, he had not heard it spoken from the cradle, but had acquired it late in life. The professor, according to himself, was a very efficient Irish scholar.

"I believe you have written many books in the Irish language?" asked the Chief Justice, with a bland smile.

"Yes, my lord," answered the professor.

"You have, I understand, a thorough knowledge of the language?"

"Yes, my lord."

My father, who, when a boy, had picked up a little Irish from the peasants in Clare, said: "Now, Professor, can you tell me how to say this simple sentence in Irish—Have you seen a hare pass by here?"

The expert admitted defeat. "Well," continued

the Chief Justice, "can you say, Are the hounds in sight?" The Professor had again to acknowledge himself defeated. "And yet," said his interrogator, "you call yourself an Irish scholar. I fear your Irish is not of any practical use." Turning to one of the Irish-speaking witnesses, my father said a few words to him in Irish. The man, who was overjoyed at being addressed in his own tongue, left the court probably under the impression that the Judge spoke Irish fluently.

To Serjeant Armstrong as a cross-examiner my father conceded the palm. In his opinion the Serjeant was the most skilful cross-examiner the Bar of Ireland ever produced. Once the Serjeant was cross-examining an expert on handwriting in a case of forgery. The expert, plausible and self-sufficient, ignored the Serjeant as much as possible, and addressed himself almost entirely to the Bench. Serjeant Armstrong seemed to acquiesce in all the witness said, and as he was about to leave the witness-box, politely asked him to stay one moment and tell the Judge and jury about the dog. "How about the dog?" inquired the astonished Judge. "Just tell his lordship," said the Serjeant suavely, "whether Lord Chief Baron Pigott said he would not hang a dog on your evidence when you appeared before him." The Serjeant then mentioned a famous case of forgery, and the discomfited expert had to admit the truth of Serjeant Armstrong's statement, who thus won his case.

I have heard my father, when speaking of Lord Russell of Killowen, express admiration of his skill in extracting the truth from a reluctant witness, "though," said my father, "I could never understand why the Press gave him such *kudos* for his cross-examination of Pigott in the Parnell Commission, inasmuch as a poor, miserable, cowardly creature such as Pigott was easily shown up. Russell did many more difficult things than his cross-examination of Pigott."

My father often said that he considered Isaac Butt the most eloquent speaker he had heard, and that on first hearing Gladstone he experienced a feeling of disappointment, which changed to one of pleasurable appreciation when he became accustomed to the Northern burr.

I recollect hearing Mr. Gladstone very severely criticized in my father's presence. Some denounced Gladstone for having abandoned Gordon; others, on account of his Irish policy and his Home Rule Bill. My father listened in silence for a time and then said: "There was one thing about Gladstone I could never forgive or get over." "What could you never forgive or get over, Chief Justice?" queried his listeners. "His transcendent ability," was the answer.

My father always maintained that the most eloquent address he had ever heard at the Bar was delivered by the late Lord O'Hagan in defence of an Italian Jesuit who had held a mission somewhere

near Dublin, and had preached against the evils which accrue from reading pernicious literature. The Jesuit suggested that those possessing any immoral books should bring them into the chapel yard and burn them. Accordingly numerous books were placed in barrows and wheeled into the chapel yard, where a fire was lighted and the books destroyed. It was alleged that among the books thus burnt was a Bible.

Father Petcherini, the Jesuit, indignantly denied all knowledge of the occurrence. Lord O'Hagan, in the most eloquent of speeches, pointed out what infinite service the Catholic Church had rendered Christianity by translating the Scriptures and preserving them throughout troublous times when the light of faith was all but extinguished.

## CHAPTER XXIV

### AN ELDERLY LOTHARIO

ONCE I visited the Four Courts while my father was hearing an amusing case of breach of promise, which entertained me much.

An action was brought by a lady against a decrepit old gentleman, who was known as the Chevalier Bergin. The first meeting between the couple had taken place in the grounds of some private hospital or sanatorium. The gentleman was elderly, having reached his threescore years and ten. The lady seemed to have "rushed" him, inasmuch as she even fixed the wedding date without having consulted him. The defendant introduced himself to the lady as the "Chevalier Bergin, a man of wealth and title," and the plaintiff, who was badly off, evidently thought "Here's a good thing," or, perhaps, "Here's a soft thing." The lady whose affections were tampered with admitted that she was twenty-eight years of age, though she hardly looked so much as she stood in the witness-box, clad in black, and wearing a long veil over her hat, the folds of which graceful head-gear fell almost to her feet. From the Bench came a polite request that she would raise her veil so that the court might see what the Chevalier saw. The

lady was reluctant to comply with this request, but Mr. Healy, who appeared for the defendant, insisted that she should "dis-cocoon herself," and objected to her coming into court hooded like a "Turkish lady." She then proceeded to unwind her yashmak-like head-dress, and when her becoming draperies were removed, she seemed older than she had at first appeared. Her birth certificate was produced, and showed that she had courageously deducted eighteen years from her age. When examined, she said that the Chevalier became so enamoured of her at first sight that she thought it necessary to say her name was Mrs. Keegan, in order to "put him off." On hearing that she was married, he seemed so much disappointed that she relented, and confessed that she was Miss Keegan; whereupon this elderly Lothario devoutly exclaimed, "Thank God!" The lady spoke of walks in the romantic and shady grounds of the sanatorium, where they discussed foreign travels, and defendant made her repeat after him that she would be true to him while she lived, the lady taking care to do so in the presence of a witness.

Much amusement was created in court by the cross-examination of the Chevalier, a doddering old gentleman, who boasted of his successes with the fair sex, after which brag Serjeant Moriarty\* scanned him for a moment, with a whimsical expression of countenance, and then pleasantly remarked:

\* Afterwards Lord Justice.—EDITOR.



“Chevalier, I had no idea that you were such a devil of a fellow.”

The old gentleman thereupon flew into a passion, and threatened to call out the Serjeant, adding, “If I had my health I would be in better form for you.” The Serjeant, nothing daunted by the Chevalier’s challenge, proceeded to assure the defendant that he was in excellent form, and the very pink of courtesy.

“I ought to be, because of the title I bear,” the Chevalier pompously remarked.

When asked if he had ever put his arms round the lady, he ungallantly said: “It was she put her arms round about me first—it was she who first kissed me,” he added emphatically amidst much laughter.

Witnesses were called to give evidence as to a promise of marriage. It was quite evident that the Chevalier had undoubtedly promised, in the presence of witnesses, to marry the plaintiff, and the Judge, when summing up, pointed out to the jury that the question for them to decide was, Did the defendant promise to marry the plaintiff, and if he did, to what damages was she entitled? With regard to the lady’s age, he said: “It has become almost a maxim of law in these courts that a lady is entitled to take a few years off her age, but taking off eighteen years is going a little too far!”

The jury found for the plaintiff, who was awarded damages.

## CHAPTER XXV

AN AWKWARD PREDICAMENT—FRIENDS—JUDGE WEBB

ONCE, through a stupid mistake on the part of a railway porter, my father was placed in a somewhat awkward predicament. He was a Q.C., at the time, and was travelling to the south, to appear in some big case at the Assizes. He had with him a light portmanteau, which contained his silk gown and wig. Travelling by the train was a Bishop, who was going to the same place to hold a Confirmation service. He, too, had a small portmanteau. When the train reached the station for which my father was bound, a fuddled porter gave him the Bishop's portmanteau. My father hurried to the court-house and opened the portmanteau with a view to robing. What was his dismay to discover instead of his wig and gown a mitre, cross, and gorgeous vestments! The Bishop was equally surprised to find that the garb in which he was to administer Confirmation were a wig and gown. A member of the junior Bar made a very clever and amusing caricature of an eminent Q.C. wrathfully pacing up and down, crowned with a mitre, while the Judge of Assizes sat on the Bench waiting, like patience on a monument, for the proceedings to begin.

My father had a large and miscellaneous acquaintance, comprising, as he himself said, all sorts and conditions of men. He numbered amongst his dearest friends his schoolfellow, Lord Chancellor Naish; Sir Edward Carson, who was his devil, and whom he was wont to describe as "*Bon Diable*"; and Lord Londonderry—kindest and best of friends. Of the Judges, my father held in affectionate regard Lord Chief Baron Palles, Lord Justice Holmes, Mr. Justice Gibson, and Mr. Justice Ross. He had a sincere affection for Lord Atkinson, who was closely associated with him in many criminal prosecutions, was called to the Bar at the same time, and took silk on the same day.

Dr. Webb, a Fellow of Trinity College, and afterwards a County Court Judge, was a fairly frequent visitor at our house in my childhood. He was the author of some philosophical works, and on one occasion when he came to see us brought with him as a present a book which he had himself written, and which was entitled "*The Veil of Isis*," in which work he gives a summary of Berkeleianism. The learned Doctor began to explain Bishop Berkeley's philosophy, and endeavoured to persuade his hearers that material things exist only in idea, and that the physical universe is not an independent reality. My father, who was not given to metaphysical reasoning and was, above all, practical, listened for a time to Dr. Webb's elaborate subtleties, but at last said impatiently: "Webb, may I knock your head against that book-case? and you can then tell me if it exists materially";

at which remark the Doctor laughed good-humouredly and said: "I will give you another book more to your taste," and shortly afterwards sent him a presentation copy of his translation of Goethe's "Faust," with which work my father was charmed. So delighted was he with it that, there and then, though quite little girls, we were made to read "Faust" in the original, also to commit to memory many of the principal songs, and compare them with the Doctor's translations, which my father considered finer than Taylor's, perhaps because of his regard for the translator.

During Judge Webb's last illness my father went to see him frequently. On the occasion of the last visit, I recollect him saying, "I have been sitting with poor Webb. It was a melancholy spectacle to see him so weak; the end can't be far off. He was having lunch when I arrived, and insisted on my having a last glass of wine with him. It is sad to see so great an intellect, and so good a heart, going the way of all flesh. Those lines he was so fond of in 'Faust' kept coming into my mind while I was with him. What would not poor Webb give to be young once again!"

The lines referred to were those from the Prelude to "Faust." Dr. Webb translated them thus felicitously:

Oh, give me back the time of growing,  
When I myself was in my Spring,  
And when the fount of song was flowing  
With fresh, unbroken carolling—

When all was haze, and all illusion,  
When wonder lurked in every flower  
And blooms in thousands decked the bower,  
And dales were one divine profusion.  
Naught had I, but enough for youth  
Delight in dreams, and longing after truth,  
Give me the yet untamed emotion,  
The bliss that tingled into pain,  
The power of hatred, love's devotion,  
Oh, give me back my youth again.'

## CHAPTER XXVI

THE THEATRE—SPURGEON—CHRISTIAN SCIENCE—DINNER  
WITH QUEEN VICTORIA

IN his young days my father was something of a theatre-goer. He loved all Shakespeare's plays, but "Hamlet" was his favourite. In the rôle of Hamlet, Mr. Forbes Robertson gave him more pleasure than any other actor. I remember him telling me that when he was at Trinity College he attended a representation of "Hamlet" given at the old Theatre Royal, Dublin. The play was wretchedly rendered, the ghost's part being played by an actor who ranted in the most ludicrous fashion. Great was my father's delight when a voice from the gods suddenly called out: "The devil such a ghost I ever seen!" a remark which much disconcerted not only the ghost, but also Hamlet.

When I was a child, my father, if he wished to give me a treat, would take me to the theatre to see Irving and Miss Ellen Terry in one of Shakespeare's plays, but I could rarely prevail upon him to bring me to a musical comedy.

He was an admirer of Sir Herbert Tree, and invariably went to see him act when he came to Dublin. As Malvolio in "Twelfth Night," he considered Tree

quite inimitable. Sir Herbert and Lady Tree were friends of his, and we generally contrived to see something of them when they came to Ireland.

My father, when a young barrister, acted occasionally in private theatricals. These performances generally took place in Clare, where my uncle, in order to provide amusement for his guests, improvised a theatre, utilizing an empty house on his estate for the purpose. In that remote district the guests, who were quite dependent on their own resources for entertainment, acted in many little pieces, much to their amusement and satisfaction. The audience was not critical, and consisted chiefly of tenants. The neighbours were few, and motors had still to be invented. One night it fell to my father's lot to impersonate an ardent and impoverished lover, who urged, in impassioned language, a young and beautiful lady to elope with him. He acted his part so convincingly, and with so much spirit, that a countryman, carried away by the acting, forgot it was only acting, and called out, "Shame on you, Mr. Peter, with a wife of your own at home!"

One of my very early recollections is that of my father telling me that he was going to the Tabernacle to hear Spurgeon preach, and proposing that I should accompany him. I am ashamed to say that up to that time I had never heard of Spurgeon. On being told that he was London's greatest preacher, I eagerly assented. So many years have elapsed since then that I have forgotten much, and have but a dim

recollection of a large building, an enormous crowd, and a stout man who had a magical voice, which he managed most skilfully; it never seemed loud and at times sank to a whisper, yet it could be heard in every nook and corner of the edifice. Part of the sermon I have forgotten, though I recollect that it was on the evils of self-righteousness and the virtue of humility. The preacher did not, as it were, preach to the congregation, but rather talked to them in a friendly manner. He at once established a feeling of friendship between himself and each one present: one felt he was a great humanitarian whose "human heart was touched by human things." He had the power of making one laugh or weep with him. He told us a little story to illustrate the evil of self-righteousness. He said that some Prince, visiting a prison *incognito*, was taken into the prison yard by the governor of the jail. The prisoners were exercising, and the Prince questioned each man as to the reason of his imprisonment. With the exception of one man, each criminal told the Prince that he had found himself in jail because, though innocent, he had been wrongly accused, or because of some miscarriage of justice. When the Prince came to the last man, he said to him: "What's the reason of your imprisonment?"

"Alas!" said the prisoner in contrite accents, "I stole a purse." "You stole a purse!" exclaimed the Prince, as if horrified. Then turning to the governor, he said: "It is monstrous that a thief should be among



so many honest men. Remove his handcuffs. I give him his liberty. Prisoner, you are free." Child though I was, I was greatly impressed by the manner in which Spurgeon managed his voice, and with his preaching. "How simply he spoke!" I said to my father. "Yes," was the answer, "*Ars est celare artem.*"

Though my father possessed a very large share of courage, and in the bad time when his life was in jeopardy was ever cheerful, yet, like many highly-strung people, he had a horror of physical ills. One day when speaking to a friend (a lady)—an ardent Christian Scientist—he expressed himself apprehensive of having contracted a chill. The lady chided him for his nervousness, and told him if he made up his mind to be well he would not be conscious of illness. She spoke of the triumph of mind over matter, and lent him a book explaining the doctrines of Christian Science. As he did not peruse "*The Principles of Christian Science*" he was, of course, unable to express an opinion on the book, as he had been requested to do. He extracted himself from the difficulty by the notelet which he wrote when returning the book. It ran thus:

"DEAR LADY,

"Many thanks for so kindly lending me '*The Principles of Christian Science*,' which I now return. Last night, *alás!* I drank champagne and port at dinner, and this morning feel neither a Christian nor a Scientist.

"Yours sincerely,

"O'BRIEN."

Once in his presence some friends who were discussing death happened to remark that this world was a vale of tears, and to leave it was a happy release. My father, who up to that time had not taken part in the conversation, then told the following little anecdote of a friend, whom we shall call Colonel Adams, though that was not his name. The Colonel lived at a place which we shall call Ballyaller, a dilapidated house completely isolated, in the West of Ireland. Touchstone's words would describe the Colonel's feelings—"a poor thing, but my own"—for he loved Ballyaller dearly. During his last illness, which was long, the clergyman of his parish constantly visited him to administer spiritual consolation. One day, finding the invalid much depressed, the clergyman spoke disdainfully of the fleeting joys of this world, and dwelt on the glories of paradise, describing the jasper city and all its beauties. The poor Colonel listened politely, seeming to acquiesce in everything, but when the clergyman had finished speaking, said wistfully: "To be sure, heaven may be a very beautiful place, but I'd be quite content if they'd only leave me at Ballyaller," meaning by "*they*" the powers that be.

On the occasion of Queen Victoria's last visit to Ireland, Her Majesty's Irish Chief Justice received a command to dine with the Queen. This summons placed him in a difficult position, as he did not receive it till the morning of the day for which the dinner was fixed, and his Court suit was in London! Luckily, his tailor was a man of resource, and promised to run

up a suit in time, but he warned my father to beware of gesticulation, or much movement, lest the hasty stitching might give. The suit was delivered in due course, and the Chief hurried off to the Viceregal Lodge, hoping fervently that the stitches would hold, and that he would not be seized with a fit of sneezing. Fortunately, the stitches did what was required of them, so that his nervous apprehension wore off, and he was free to enjoy himself. When dinner was over, Her Majesty, who sat in an arm-chair in the centre of the room, sent for him and held a prolonged conversation with him concerning Ireland and Irish affairs, which, he said, she discussed with much intelligence. It was only when she rose and, leaning on a stick, walked out of the room, that he realized how aged and feeble she was. I have been told that the Queen laughed heartily at my father's account of how, when a serjeant-at-law, he bested a Swiss hotel-keeper. One hot, airless night he arrived at Lucerne, when the season was at its height, and drove to one of the principal hotels. He was assigned a small, stuffy bedroom, and on asking for a more airy apartment, was informed that the hotel was so crowded that there was not another room available. He then inscribed the following words in the visitors' book: "Her Britannic Majesty's Second Serjeant-at-Law." This high-sounding title so greatly impressed and perplexed the manager, that he debated as to whether my father ought to be received with diplomatic courtesies! Needless to add, he was at once given a splendid and spacious apartment.

## CHAPTER XXVII

### THE INTERNATIONAL BOAT RACE

It was due to my father's efforts that the International Boat Race took place in July, 1902, on the River Lee, when a cup was competed for, the value of which was some four hundred pounds. The entry for this International Cup was larger than the entry for the Grand Challenge Cup at Henley. The Leander Club was the first to declare that it would send a crew to compete upon the Lee; Oxford sent two crews, and Cambridge one from Emmanuel College; Ireland entered eight of her best crews; and Germany sent one from Berlin. This sporting event was the most interesting that ever took place on Irish waters, and was witnessed by an enormous concourse of people, the crowd covering the two miles of thoroughfare on both sides of the Lee. Every shop in Cork was closed, and the weather, strange to say, behaved so admirably that the beautiful river was without a ripple. Bunting displayed itself gaily, while pleasure-boats were decorated with the colours of the various rowing clubs, the rose-red of the Leander Club being everywhere conspicuous. Cork is proverbially hospitable, and each and all vied in entertaining and accommodating the various crews.

My father threw himself heart and soul into making the race a success; it was characteristic of him to be very eager about anything in which he was interested. I hope he wished as ardently as I did that an Irish rowing club would win. At one moment Germany seemed likely to carry off the trophy; there was a moment of breathless tension when the German crew led by a length; then the Leander caught them up, and they rowed neck to neck for about three yards, the Leander finally winning by one length. A storm of deafening cheers greeted this most exciting finish.

"I had no idea a boat race could be so thrilling," said a racing man when the race was over. "Just think—I, who have kept race-horses all my life and bet largely, could have had just the same excitement without expense."

Lady Bandon presented the cup to the victors. My father was greatly pleased at the success of the regatta, and at the orderly bearing of the vast assemblage. He had always an affection for Cork, the scene of his early triumphs at the Bar. The boat race attracted a great crowd, and as it took place during the Cork Exhibition, did much to increase the success of that enterprise.

When the race was first suggested, many persons threw cold water on the idea. "You will never get Irishmen to pull together, not even in a boat," was the remark made to my father over and over again. But he understood the Irish character, and the only reply he vouchsafed was, "Won't I? We shall see."

Who are the critics? Those who have failed in life."

He was lucky in having the assistance of Mr. H. G. Gold, and of that athlete and man of letters Mr. R. H. Lehmann. Both these gentlemen acted as umpires, and my father's many friends helped him, with their subscriptions, to provide the cup. One friend, whom he met in the Kildare Street Club, when asked for a subscription, wrote the following amusing parody on Prout's well-known poem:

" O the Groves of Blarney !  
 They are so charming  
 Around the Rock of  
 Sweet Cajolry !  
 Whence that noble Scion,  
 The Lord O'Brien,  
 In old Kildare Street  
 Came down on me,

" With his high *Mandamus*,  
 (For his word that same is)  
 ' Pay those two guineas I've  
 Assessed on thee  
 For my noble muster  
 That's to add new lustre  
 To the pleasant waters  
 Of the River Lee.'

" Oh, Cam and Isis  
 Have their great Boat prizes,  
 But when next Summer ends  
 Where shall these be ?  
 When their ancient story  
 Must yield its glory  
 To the glorious waters  
 Of the River Lee !

“ When all Erin’s Island—  
Town, plain and highland—  
Shall joyful gather round  
Our ‘ Chief ’ from Clare,  
Clan of Kinkora  
From Kilfenora,  
As he lifts his ‘ Loving Cup ’  
Resplendent there.”

## CHAPTER XXVIII

### NEWLANDS HOUSE—THE INVISIBLE COACH

ON leaving Castletown we anchored at Newlands House, which is situated above Clondalkin, not far from the Dublin Mountains. If the house is somewhat isolated, the surrounding scenery is lovely. In spring the hills are yellow with gorse, while in summer and in early autumn the heather and bracken are a joy to the eye. We made many expeditions in the neighbourhood, which afforded my father much pleasure. He was very fond of scenery, and would travel any distance to obtain a good view. Newlands is a very old house, and looks much older than it really is, inasmuch as it is much weather-beaten, having been buffeted by many a wild storm from the hills. From an elevation in the grounds there is an extensive panorama of Dublin and its surroundings.

A Dominican monastery nestles at the foot of Tal-laght Hill, and in our rambles we frequently came upon the monks, picturesque in the flowing black-and-white habits of their Order.

At Newlands my father got together a pack of basset hounds, and he used to derive much pleasure in following them on foot.

There is a tradition that Newlands



It had at one time been the residence of Lord Kilwarden, Lord Chief Justice of Ireland, who was assassinated in 1803, in the Emmet rising, under the most tragic circumstances. The Lord Chief Justice, when driving to Dublin to attend a meeting of the Privy Council, was set upon by the rebels, dragged from his coach, and stabbed. The terrified horses returned to Newlands at a gallop, where Lady Kilwarden met the empty coach. From time to time ever since, the sounds of horses' hoofs are supposed to be heard on the avenue, accompanied by the loud rumble of heavy coach-wheels.

Inscribed on a pane of glass in a window at Newlands is Lord Kilwarden's name. It is, as far as I know, on the pane to this day. When my father heard that the place was supposed to be haunted, he asked if the ghost was an "inside" or an "outside" one, and on hearing that the ghostly manifestations were confined to the grounds, he took the house, notwithstanding its rather gloomy history. When we had been at Newlands about a month, I had a strange experience. One lovely afternoon, in early autumn, I was sitting alone in the drawing-room, which is situated at the back of the house. The sun was streaming through the open window, and a small fire burned briskly on the hearth. It had been lit more for the sake of cheerfulness than warmth. Among the flower-beds I could hear belated bees drowsily humming. I had an interesting book in my hand, and was feeling lazy and immeasurably

content. Nothing was further from my thoughts than ghostly visitations. Suddenly I heard the sound of horses' hoofs on the avenue. Visitors, I thought regretfully, and prepared to lay aside my book. I listened for a moment, and concluded that visitors were not coming, for the sounds were like those of some heavy van or coach lumbering up the avenue. I went into the hall and on to the doorsteps, looking to right and left, but there was nothing in sight. I returned to the drawing-room much perplexed, feeling that perhaps after all there were such things as ghosts, and that Lord Kilwarden's invisible coach had paid me a visit, though I experienced no feeling of alarm; it was almost impossible to feel nervous in broad daylight with the sun shining brightly. When my family heard of the occurrence, they could find no solution of the mystery, but seemed to think I had been a prey to superstitious fears. My father cheerfully remarked that if Lord Kilwarden did drive about the neighbourhood, he would have displayed a decided lack of courtesy had he not called upon the Chief Justice. The mysterious rumbling of coach-wheels was explained shortly afterwards in the following manner: One day, happening to be in the grounds at the rear of the house, I again distinctly heard the rumbling of heavy wheels. My sister, who had been with me a few minutes before, had gone indoors. I thought she was still near, and called out loudly, "Do you hear the coach on the avenue?"

There was no answer to my question, but my own

words came back to me distinctly, thus enabling me to solve the mystery of the invisible coach; for in that part of the grounds which was situated about a hundred yards or so from the drawing-room, where I had first heard the rumbling of the wheels, there was a loud echo. I called out several times, and always heard my own voice borne on the breeze. I then went towards the wall which surrounded the domain, and, looking over, saw a heavy dray going down the Nass Road. It was only at one particular spot that the sounds were audible, and that spot was situated in a direction parallel with the drawing-room at the rear of Newlands; from the front of the house the sounds could not be heard.

This is the somewhat prosaic explanation of Lord Kilwarden's coach.

It was supposed that there was a hollow somewhere under the grounds at Newlands, which has served as a lurking-place for rebels, and which communicated with a secret passage leading to the Dublin Mountains, where the rebels used to hold meetings. In this cavity a treasure was supposed to be buried. How many hours I wasted looking for the treasure, and the secret passage!

## CHAPTER XXIX

### CARLSBAD—VERSAILLES

IN the summer of 1908 my father journeyed to Carlsbad under his doctor's orders; I accompanied him. He derived much benefit from the *Sprudel* waters, the change of scene, and the invigorating air. What endless and delightful rambles we took through the great pine forests! Walking through the woods, inhaling the fragrant scent of the pine-trees, forms part of the cure at Carlsbad. The forest to us was a haunt of endless joy. How delightful were its cool, mysterious depths! How noble its great upstanding, blue-black firs! A winding path would bring us suddenly in sight of some flower-bedecked shrine where suffering pilgrims knelt, praying probably for restoration to health. Life begins early at Carlsbad; people are astir before five o'clock in the morning, and are to be seen at the *Sprudel* drinking their glasses of water.

The queue at the well is often half a mile in length, and in it one sees representatives from every nation, progressing literally by inches to their goal. One day we motored to Marienbad to call on a friend. In the street there we met His Majesty King Edward, who honoured his Irish Chief Justice by stopping to say a few words to him. His Majesty, ever anxious

to promote pleasant social intercourse, bade us call on Monsieur Clémenceau, who was then "doing a cure" at Carlsbad. My father obeyed orders, feeling somewhat apprehensive lest Monsieur Clémenceau should not be able to speak English, in which case, he said, "I shall have to air my County Clare French."

However, we found that Monsieur Clémenceau spoke English perfectly. He received us most cordially, and as he was leaving Carlsbad in the course of a few days, suggested that we should call upon him when passing through Paris on our way home. This we did, and he made things very pleasant for us in the French capital during our brief visit there. Indeed, this visit to Paris stands out as one of the pleasantest experiences in both our lives. It was late in September when we reached Paris; the weather was glorious—fine and dry. Each day we made interesting excursions. We visited Versailles and Fontainebleau, and as we had special permits, owing to the kindness of Monsieur Clémenceau, we were admitted to many places of interest not usually open to the public. At Fontainebleau we were shown over the apartments of Napoleon and Josephine, and the rooms once occupied by the *spirituelle* de Maintenon. We sat upon her sunny balcony overlooking the famous carp pond where she and the Roi Soleil were wont to sit chatting in their old age, when both were the victims of rheumatism and failing health.

We were greatly interested in pictures of Madame de Montespan and of Louise de la Vallière, and my father,

who had a penchant for the gentle de la Vallière (for which Whyte-Melville's charming novel "Sister Louise" was responsible), was forced to acknowledge, very much against the grain, that she was plain—distinctly plain. His disillusionment caused me much amusement, and I could not resist chaffing him. But he appeared so downcast that I took pity on him, and told him by way of consolation that in all probability the painter had not done her justice. We also visited St. Germain, interesting to English people inasmuch as the exiled James II. and his consort, the lovely Mary Beatrice of Modena, took up their abode there after the flight from England. Only a few stones remain to mark the spot where the palace stood, which was destroyed by the Communists. From the Pavillon Henri Quatre, near the ruins, we obtained a glorious view of the Seine, quivering and glittering in the autumn sunlight as it wound its way, like a silver ribbon, through the pleasant land of France.

## CHAPTER XXX

ABBOTSFORD—DRYBURGH ABBEY—SEDAN DAY—HERBERT  
BISMARCK—LORD WOLSELEY

IN the autumn of 1912 my father and I made an expedition to Scotland, where we stayed with Sir Richard and Lady Waldie Griffith at Hendersyde Park, romantically situated on the Tweed. It was his last visit to Scotland, and he thoroughly enjoyed it. He delighted in the historical associations of the Border country; and, an enthusiastic admirer of Sir Walter Scott, he was in his element in Scott's country. We made a pilgrimage to Abbotsford, where we inspected Sir Walter's library with much interest. My father had the greatest admiration for Scott's indomitable courage when, confronted with the prospect of financial ruin in his old age, he began writing again, and rebuilt his fortune by his pen. He spoke of how incessantly Scott worked, and dwelt on this incident in Scott's life. He told me that Lockhart, when living in Edinburgh, used to see in the window of a house opposite his, a hand constantly writing. This busy hand, running over the paper, was all that was visible between the curtains. First thing in the morning and last thing at night, Lockhart saw it. He grew curious to know to whom the hand belonged,

and discovered that it was that of Sir Walter Scott, working indefatigably at his immortal novels. What pleasure my father derived from the Waverley Novels! In fact, he read few other works of fiction. He was never a great reader, but read the books he liked over and over again, which comprised Shakespeare's plays, the Bible, and Scott's novels. He was once seriously annoyed with me because I ventured to say in his presence that the Waverley Novels belong to a past age. I never recollect seeing him read a modern sensational novel. Historical works greatly interested him, and he had a liking for the writings of Harrison Ainsworth. He confessed that in his youth he had shed copious tears over "Guy Fawkes." Of the Waverley Novels, his favourites were "Ivanhoe," "The Heart of Midlothian," and "Woodstock." He could quote passages from them by heart. A favourite passage of his was the one from "Woodstock" beginning: "Oh, Antony Vandyke, what a power was thine!" It is spoken by Cromwell when, overwhelmed by emotion, he suddenly sees a picture of Charles I. My father had a liking for Scott's poetry, and wished to visit Melrose Abbey, so our kind host and hostess motored us there, but not "by the pale moonlight." We also motored to Jedburgh Castle, where Queen Mary stayed when she rode from Holyrood to meet Bothwell.

We were pointed out Queen Mary's Mire—a marshy field, in those days a quagmire, where many of her retinue were engulfed. My father quoted



freely from "The Abbot" and "The Monastery," and would ever and anon break off to exclaim, "What a debt of gratitude Scotland owes to Scott! Why, he immortalized every stone here."

Before we left Scotland we visited Dryburgh Abbey, where Sir Walter Scott is buried. The old abbey, at once so grand and peaceful, seemed on that autumn afternoon a meet resting-place for the great Scotchman. It was too late in the season for excursionists, so that we had it all to ourselves. Nothing disturbed the silence save a robin, which, perched on the novelist's tomb, bravely sang its melancholy autumn song.

This visit to Scotland was the last of the many delightful expeditions we made together. I was his constant companion from my early childhood, and shared many of his experiences. My sister and I, when quite small children, rode by his side up the Brocken in the Hartz Mountains, amusing him the while by our prattle of Faust and the Witches' Sabbath. He encouraged us to talk freely with him, and never talked "down" to us, an aggravating habit common to many "grown-ups." On reaching the summit of the Brocken, we came upon a large crowd of schoolboys beating drums and waving flags. We inquired the cause of this jubilation, and were told that as it was the 4th of September, they were celebrating the anniversary of the Battle of Sedan, as is the custom in Germany. I remember him telling us of the Franco-German War, and of the

German success at Sedan, and he told us what insufferable airs the victors gave themselves at the close of the war, bragging of their successes, and that their bounce and swagger were quite unbearable. He thus kept two little girls interested all day.

It was only when we returned to our hotel that we realized how tired we were, and what a long excursion we had made. He was much interested in military strategy, and liked discussing famous battles. As a child, at his request, I read aloud to him Sir Edward Creasy's "Decisive Battles of the World," and he insisted upon my marking on the map places where important battles had taken place. Though these readings were doubtless improving, I fear I did not enjoy them as I ought. In those days I found Sir Edward Creasy very dry; the words seemed very big, and the names very unpronounceable. My father visited Mars la Tour, Sedan, and those places where important actions had taken place in the war of 1870. When Count Herbert Bismarck was the guest of Lord Londonderry in Dublin, he called upon my father at the courts. As they were talking together, Count Bismarck gave a sudden wince, as if in pain. "What is the matter, Count?" asked my father. "Oh, nothing to signify," came the answer; "only a rheumatic pang. My leg is like a weather-cock, since some damned Frenchman put a bullet in it in the Franco-Prussian War."

Count Bismarck was much struck at seeing some dilapidated, ill-countenanced men waiting to be tried.

"Surely," he said, "each of these rascally fellows is not to be separately tried. What a waste of time! It would be wiser to hang the lot." He was good-humoured and pleasant, very homely in his manner; indeed, there was very little *Kultur* or *Bildung* (which is the better word) about him. At dinner he partook largely of oysters, and astonished us all greatly by drinking champagne and porter at the same meal.

Once when my father and I were travelling we found ourselves in the same compartment with Lord Wolseley, who was a most entertaining conversationalist. After a time he and my father discussed wars and warfare. My father observed that conducting a campaign must be a terrible strain on the nervous system. "Yes," answered Lord Wolseley, "one must keep very fit and practise abstinence. For weeks before the Battle of Tel-el-Kebir I eschewed even the mildest cigarette, but when victory was ours I smoked sixteen straight off without a check, and how I enjoyed that smoke!"

## CHAPTER XXXI

### RESIGNATION—LAST DAYS

My father resigned the Chief-Justiceship of Ireland in January, 1913. When the news appeared in the papers he received many messages of regret and affection, especially from Clare—he was ever proud of being a Clare man. The Bishop of Killaloe wrote:

“ENNIS,  
“19. 11. '13.

“MY DEAR LORD O'BRIEN,

“I must write one most sincere word to say with what genuine sorrow I see it announced that you are about, because of ill-health, to resign the office of Lord Chief Justice, which you have filled for so many years, and with such splendid dignity. I think, too, that in this matter I can speak not only for myself, but for the great body of the people of Clare, especially that portion of the people for which I am specially responsible, who all regret your illness, and with whom you have been always popular, feeling as they did that in you they had a true and courageous friend who never forgot the country where he was born.

“I wish you a speedy return to perfect health,

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and I earnestly pray the Good God Who has blessed your life so propitiously to grant you still many years to enjoy your well-earned repose.

“ Believe me, dear Lord O'Brien,

“ Yours sincerely,

“ F. M. FOGHERTY,

“ *Bishop of Killaloe.*”

Another Clare friend wrote:

“ . . . I knew you first as Peter O'Brien, and afterwards as Peter the Packer, and I then followed your career all through, and I have always been proud of you, and of Clare for having produced so eminent a lawyer.”

Mr. Birrell, who had remonstrated with him for resigning, wrote thus:

“ You have slipped through my fingers most scandalously. Will we get a better Irishman than you to cajole a jury into observing their oaths ?”

All these kind messages touched my father greatly. He felt keenly his severance with Bench and Bar. We hoped that once his resignation became a *fait accompli*, his health would improve, but such was not the case. He missed his accustomed work. Perhaps his most remarkable trait was his love of his profession. He was greatly interested in everything associated with the Bar of Ireland, and was proud of its achievements. He was ever ready to hold out a helping hand to a nervous young barrister, and if he could honestly give a word of praise or encourage-

ment, he never let the occasion slip. On the Bench, he was ever courteous, considerate, and forbearing.

As the months wore on we could see he was failing, but with the approach of summer he made a wonderful rally, and we hoped that we might keep him with us for a considerable time. By August, 1914, his health had so improved that he was able to be out again. One fine sunshiny morning in the early days of the War, he and I went for what was to be our last drive together. We had shopping on hand, and on reaching Grafton Street, we found a vast crowd assembled to see some regiment march to the North Wall for embarkation, its final destination being the Front. We drew up to see it pass. There was a scene of boundless enthusiasm; the windows above the shops were thrown open; workgirls appeared, cheering and waving handkerchiefs. A steady stream of soldiers poured past, the officers riding alongside of the men, who were singing bravely. An officer, recognizing "The Chief," as my father was affectionately called, saluted when passing the motor. The men, most of them Irish, and many of them probably Dublin boys, evidently knew him by sight, for they all saluted him, and he returned each salute. When the last soldier disappeared, I turned to speak to him. His eyes were full of tears; he knew full well that he would not be spared to witness their return. A month later, on the 7th of September, he passed away peacefully, in the presence of those whom he loved, who were gathered round his bedside.

After the blow had fallen, my mother received many kind letters to condole with her on her irreparable loss. Lord Londonderry (alas, so soon to follow !) sent one of the first messages of sympathy, writing:

“ . . . I can assure you my regard for him whom I always called Peter was very great. He was always the dearest and kindest friend to me. I shall ever look back to that friendship with feelings of the greatest pleasure. I am indeed glad to think that I went to see him at Bath, for I gathered from Sir Edward Carson it gave him great pleasure, but I would have done more for him than this.”

Sir Horace Plunkett wrote thus appreciatively of his high courage:

“ DEAR LADY O'BRIEN,

“ I have avoided the flood of letters purposely. It gives less pain, too, when such bereavements are recalled after the first shock is past. Allow me now to send my tribute of deep sympathy with you and your family at the passing of your distinguished husband.

“ What always struck me most in his career was his wonderful courage. Few men of his time had their courage more thoroughly tested. He never once lost his cheerfulness ! It was a full life, and, considering what he went through, the end came no sooner than his friends might have expected, much

as they would have wished a long calm evening after such a life of strenuous service.

“I wish you and your family all the comforts which you should derive from the remembrance of his achievements and his charm, and from the knowledge that a very wide circle of friends is deploring his loss and sympathizing with those near and dear to him.

“ Believe me,

“ Yours sincerely,

“ HORACE PLUNKETT.”



## APPENDIX I

### TRIBUTE FROM THE JUDGES

AT the opening of Michaelmas Term at the Four Courts, the Judges of the King's Bench Division met together and paid a tribute to the memory of my father, who for a quarter of a century occupied the position of Lord Chief Justice of Ireland.

The Lord Chief Justice said that as this was the first occasion since the lamented death of Lord O'Brien of Kilfenora that this Divisional Court had sat, it was right that he as the President of the Court should express on his own behalf and on behalf of his colleagues of the Bench, the officials of the Court, and he hoped also on behalf of the Bar and the Solicitor profession, their feelings of very deep regret at the death of Lord O'Brien. The career of Lord O'Brien was known to them all. He was for twenty-five years President of this Court, and before that he was a law officer of the Crown. The older members present recollected him as a practising barrister, the younger only as a Judge. If they appealed to any of these, the older or the younger members, as to what they thought was the chief characteristic of the late Judge, he thought they would all agree in saying that it was his great courage. He was an

Irishman to the backbone—a typical Irishman—and he possessed in a high degree that high quality which they rightly or wrongly associated with their race—that of courage. As a barrister he was a fearless advocate, and as a law officer he obtained promotion very early in life. Many of them recollected the years in which he was Solicitor-General and Attorney-General. They were troublous years, of great storm and stress. Political passions ran high and acts of violence were committed throughout Ireland. The Executive took means to restore order. There was a good deal of difference of opinion among persons of all classes with regard to those means, as to whether they were right or wrong; but whatever view they formed of that matter, everyone admired the courage of the Attorney-General, Mr. Peter O'Brien, who discharged the duties of his office often at great personal risk to himself. When he became a Judge, the chief qualities that distinguished his career were his firmness and his sound common sense. Other Judges might have exceeded him in knowledge of case law and statute law, but no Judge had a firmer grasp of legal principles than Lord O'Brien, and he applied them with courage and firmness, with dignity and with consideration for all parties. His judgments were models of lucidity and care. Knowing as he did the Irish character most thoroughly, he always had great weight with a jury, and his loss to the Bench was very severe. They all recollected a year ago when failing health compelled him to resign

his high office, and they regretted that so few days were spared to him after his retirement to enjoy his well-earned leisure. They all mourned his loss, not only as a Judge, but as a friend, and they desired to tender Lady O'Brien and the other members of his family their very sincere and deep sympathy in their bereavement.

The Solicitor-General said that in the unavoidable absence of the Attorney-General he desired to join in the tribute which had been paid to the memory of Lord O'Brien.

In the course of a long and eventful career, Lord O'Brien had many critics but few enemies, for even those who differed most from him were attracted by the fine qualities of the man. Chiefly, perhaps, by the courage referred to by the Lord Chief Justice with which he pursued what he conceived to be the path of his duty, and by the kindness of disposition which always characterized him—his was a big heart. They at the Bar especially knew and experienced his kindness. There was not one of them whom the late Lord O'Brien did not at some time or other assist by his encouragement or advice. Above all, he was a good friend to the struggling junior; he was always for the weak, against the strong. As a Judge he was patient in his search for the truth, and with an extraordinary instinct for finding it. No Judge of our time could try a case at *Nisi Prius* better than Lord O'Brien; no one did more to uphold the dignity of the courts: he insisted that the forensic battle

should be fought, as it always should be fought, according to the rules of the game, without personal animosity or heat. Bearing these things in mind, and with deep sympathy for his sorrowing friends, the Bar of Ireland reverently placed their tribute of affection and respect on the tomb of a great Judge and a great Irishman.

## APPENDIX II

### SPEECH ON WOMEN'S SUFFRAGE

My father made an important speech on Women's Suffrage, at a meeting in the Antient Concert Rooms, held under the auspices of the Conservative and Unionist Women's Franchise Association, when an address on the subject was delivered by Mrs. Fawcett.

The speech attracted widespread attention, and its delivery was received with great enthusiasm and was punctuated by repeated applause. He said:

A very great privilege has been conferred upon me to-night. I have been asked to propose a vote of thanks to Mrs. Fawcett for her address. You will all agree with me that she eminently deserves it. However much the object she advocates may continue to be the subject of controversy, there is, and can be, no doubt but that the address she delivered was altogether admirable. It was interesting—intensely interesting. It was characterized by a high order of eloquence and by very cogent logical power. The treatment of a much controverted subject was lucid and exhaustive; and the delivery—no small point in a public address—was simply perfect. And perhaps you may consider that I am not the less qualified

impartially to appreciate the great merits of Mrs. Fawcett's address, because I belong to no party, to no society, to no association, whether for or against the suffrage. I am merely a listener, though undoubtedly a very interested one. Well, what is the immediate impression left upon our minds? What is the object-lesson we have learned? Is it not this—that there is no sanction, in justice or expediency, that a woman should remain unenfranchised simply because she is a woman? That the objection based upon the ground of sex rests upon no solid foundation? Of course, a woman cannot transmute herself into a man, nor can a man transmute himself into a woman; we all rejoice, both men and women, that such a metamorphosis is impossible. But, nevertheless, no doubt you have heard the expression, “He is an old woman of a fellow”—that is to say, he is so imbecile that he is really a negligible quantity. But the male old woman, if I may illustrate the position by a contradiction in terms, no matter how senile and incompetent he may be, provided he be neither a sheer idiot, lunatic, nor alien, if he can fulfil those conditions as to the occupation of property and payment of taxes which women as well as men can fulfil, is entitled to the franchise; whereas a woman, did she possess all the wisdom of Minerva and all the wealth of Croesus, did she pay all the taxes assessable in respect of vast possessions, both in land and money, and were she endowed with all the political capacity of Mr. Gladstone, Lord Beaconsfield, Mr. Arthur

Balfour, and Mr. Asquith rolled into one, nevertheless must stand outside the franchise because she is a woman. This is certainly anomalous. Well, how did this disability, arising from sex, originate? When did it originate? It had its origin in a semi-barbarous age. It was not the creation of statute, but came into being when mere physical force, mere physical prowess, was everything, and when man, the representative of physical force, had it all his own way; at a time when men rushed heedlessly, incontinently, to the arbitrament of the spear or the sword, and when women, by reason of their inferiority as regards physical prowess, were in a state, I might say, of domestic slavery. There was an action at law some few years ago in this country which created a great deal of interest at the time. It involved the question whether women were entitled to vote at the election of Town Commissioners. The negative—that is to say, that women were incompetent to vote—was established by a narrow, by a somewhat fortuitous, majority of one in a Court of Appeal, the primary Court having been unanimously in favour of women. Lord Chief Justice Lefroy, Chief Baron Pigot, and Chief Justice Monahan—three of our greatest Judges—were in favour of affirming the right of women to vote. Chief Baron Pigot said he could not attach to women the disability which we are discussing here to-night, as the monarch who wears a crown might be a woman. His words—I am sure they will be very interesting to Mrs. Fawcett—were:

“ The reign of that Queen (*i.e.*, Queen Mary) was followed by that of Queen Elizabeth, of whom Lord Plunkett said that no monarch ever better knew the royal art of reigning. The intervening reigns of Queen Mary (Consort of William III.) and of Queen Anne have been now followed by that of another female Sovereign, not less illustrious than any of her predecessors—her present Majesty. I cannot hold that in this realm, in which a female not only may reign, but does reign, in her own right, *there is in women a common law disability arising out of mental*



not competent to vote, in the University because she is a woman. I think you will all agree that there can be no greater anomaly than this.

But what was the ground of decision in the case I referred to? This—that women were, in the eye of the law, subordinate to men; that they were inferior in judgment, discretion, and physical capacity. As regards the latter, as regards physical capacity, they are, no doubt, inferior to men; they are not as physically strong as men; they could not endure the physical sufferings of war as well as men. The general body of women are not so many Joans of Arc; they do not profess to be either warriors or saints. They claim no title to the special interposition of heaven on their behalf; they merely say that they belong to the great human family, and that, if the one portion of that family is entitled to any privilege, then, if the conditions be identical, so is the other portion too. As far as judgment, discretion, and mental capacity are concerned, I think most women are quite on a par with most men. Their intuition is quicker, their instinct is truer, and their tact is greater than that of most men. Women are more self-sacrificing than men; and from the time of Adam to the present hour their moral intrepidity has been quite equal, if not superior, to that of men. Our great male progenitor, when reproached for his disobedience in eating the forbidden fruit in the Garden of Eden; exhibiting a degree of poltroonery that can never be forgotten, said, pointing to Eve: "The woman tempted me, and I did eat."

In the field of education, as regards the capacity to acquire and impart knowledge, women have undoubtedly achieved great distinction. On this part of the argument I might appeal to the annals of Girton College and its long list of literary distinctions. A daughter of Mrs. Fawcett qualified, so far as related to examinations, for a Senior Wranglership in Mathematics at Cambridge, beating all male competitors in the subject which tries the intellect most, and in which great success involves the possession of the highest intellectual capacity. And I have in my hand here a list of the names of other daughters of that college, renowned for their many scholarly distinctions. So likewise as regards our own great University.

But now let me turn to a more practical aspect of the question, and ask, What in this practical age are the conditions which entitle—which ought to entitle—a person to the franchise? Contribution to the public purse and capacity to assist the State by promoting the public weal. Well, do not women contribute to the public purse? Are they not qualified to assist in promoting the public weal? What those women who support female suffrage complain of is that there has been, so to speak, an illogical halt in the matter; that very consideration which made the Legislature go as far as it did go ought to have brought it farther. Mrs. Fawcett has dealt with this most elaborately. She has pointed out with much detail the several positions which women were considered

capable of filling and made competent by statutory enactment to fill. So great is the change in the law that, having regard to the Married Women's Property Acts, a woman who, in relation to her husband, was formerly considered a mere nonentity can now sue him. A wife can now be a plaintiff and make her husband defendant. Not only can she hold property independently of her husband, but she can, as a sole plaintiff, sue him in our courts of law in respect of that property. Well, what measure of support has the object advocated to-night received? I need not refer to John Stuart Mill; but I am desirous, very desirous, to show that the subject has not been treated on mere party lines. Sir Henry Campbell-Bannerman supported it; Mr. Haldane, a distinguished lawyer and politician, is in favour of it; and Mr. Arthur Balfour—last, but certainly not least—spoke and voted for the same object. Mr. Justice Madden, equally distinguished in law and letters, who voted for it, informed me that the Bill on the subject of female suffrage introduced in the House of Commons was dealt with on non-party lines. I am myself a sort of cross-benchman—I hear what all sides say, but I belong to none.

It has also been said that there is no general demand for the suffrage on the part of the great body of women. I do not know exactly how this may be; but it would appear to me to be illogical and unfair to refuse to grant the franchise to a very substantial portion of the female sex who are entitled to get, and

who seek to get, it, because others may be indifferent to it. These latter object to it, so far as I can gather, owing to an unreasonable apprehension on their part that their character for refinement may be prejudiced. I do not for a moment say that they are vain; but perhaps they are hypersensitive.

There is one other objection which certainly demands consideration. It is said that the gentle, sympathetic nature of woman, and her delicacy and refinement, and devotion to home, would be seriously interfered with by the turmoil of elections, and that that turmoil would be aggravated by the emotional nature of women; and it is urged that they would become so many shrieking sisters, so many political scolds. But even at this present moment, when men reign supreme, the political arena is not characterized by the silence of the desert. However, I do not think this retort is a fair way to put the argument. From men's point of view what is meant is this—and the contention, so far from being disparaging to women, is really complimentary to them. It comes to this, that men admire women so much as they are that they deprecate all change. So profoundly impressed are some men—indeed, most men—by the other sex that they wish to stereotype them as they are. This part of the argument, in my opinion, calls for the gravest consideration. Take a professional man: what is the greatest, the best, fortune he can receive? In my opinion, a good wife. Every professional man, no matter how brilliant he may be,

has ups and downs. There is the hour of disappointment as well as the hour of success. In fortune's smile the husband's triumph is the greater because the wife shares his joy. When fortune frowns the wife's sympathy is a priceless boon. When he looks upon her who, for better for worse, has been made the companion of his life, and sees, it may be, the children she has brought him, he shakes off his sense of depression and braces himself for renewed exertion. This is home in its highest aspect, and did I think that conferring the franchise on women would interfere with the sanctity of the home this movement would not receive one word of support from me. But I am satisfied that it would have no such effect. Conferring the franchise on women would, in my opinion, enlarge the area of interest for man and wife, and by inducing the wife to look abroad on the world, would enable her to see what is best not only for her husband and herself, but for their children too. She would be better qualified to teach the children the way they should go to secure success in life. She would learn what pitfalls were to be avoided, and what road was best calculated to lead to success. She would be better qualified to choose professions for her sons and—a delicate matter—husbands for her daughters; and perhaps she might learn the lesson that at times she might be justified in bestowing the hand of her daughter upon a man who, on his part, had nothing but his heart and his brain to bestow. Her greater experience of public life would enable her to gauge

more accurately what was in a man—what manner of man he was, and what he was likely to achieve.

But it is said you must be logical. You must give seats in the House of Commons to women if you give them the franchise.

This, in my opinion, is not so. It does not at all logically follow because you give votes to women to empower them to send men to the House of Commons that they should themselves have seats in that House. People who advance this argument confound the right of representation in the House of Commons with a right to sit there. Representation is one thing, actual service in the House of Commons is another. A Member of Parliament makes politics a profession. A right to vote for a Member of Parliament certainly does not make the person who exercises that right a professional politician. In forming an opinion as to who is deserving of a vote, a woman need not leave her home and its surroundings. A seat in the House of Commons—at least, so far as Irish women are concerned—would necessitate her leaving not merely her home but her country. It is said at times that women are too emotional for public life. Well, experience, as far as it goes, contradicts this. We hear no complaints from those countries where women enjoy the franchise; but responsibility is a very effective preventive—a very cooling sedative. As to the objection, founded on the turmoil of elections, I do not think, now that the Ballot Act has been passed, that a woman's nature would suffer

much from walking to the polling-booth to make a cross upon a ballot-paper. The one danger which I would apprehend is that, as there is in most partnerships a predominant partner, there might, in the partnership of marriage, be a predominant partner also, and that the latter, whether husband or wife, might have in effect two votes.

I do not mean a predominancy gained by methods of aggression, but by that ascendancy which a strong mind insensibly and unconsciously acquires over a weaker one. This objection as to a double vote would not, of course, apply to spinsters and widows.

I fear I have spoken far too long; but before I conclude shall I say anything about the great topic of the hour—the doings of the “militants”? Perhaps I may tell you of an experience I had a few days ago. I met a very charming militant suffragette—she looked meekness itself—and, encouraged by her gentle demeanour, in my most suave tone I said: “Take care that your drastic operations do not create a revolt in the public mind against your movement.” Immediately her expression hardened, and, with a look of scorn, she exclaimed: “Don’t be affected.” I replied: “I am not affected.” Thereupon she said, with much acerbity: “What political battle, what reform worth the name, was ever won without some show of physical force—call it excess if you will? Don’t you know that it was the action of us militants which brought our movement to the

prominent position that it at present occupies—that but for us it would have ever remained in the languid atmosphere of unavailing argument? Where would the movement be but for the energy of the militants? Why, in a back seat in some obscure corner.” Before I had time to reply the young lady added: “Did you know Mr. Gladstone?” “I knew him,” I said, “to be a pre-eminent great Liberal statesman; a man of surpassing intellectuality, of stainless moral character, and of great refinement.” “Well,” said my young lady friend, “with all his refinement, with all his intellectuality, with all his stainlessness of moral character, he said that the Clerkenwell explosion—the attempt to blow up the Clerkenwell Prison—brought the question of the disestablishment of the Irish Church within the range of practical politics.” Then, with a lofty wave of the hand, the young lady added: “You were never born to be a statesman; you are a mere Judge.” “Well,” I replied, “statesman or no statesman, mere Judge or no mere Judge, if you are brought before me for a criminal offence, I will sentence you to imprisonment.” “Sentence me,” she cried, “if you will; gladly will I go to jail to attest by my sufferings the sincerity of my convictions.”

But I must pass away from this enthusiastic young lady and her militant propaganda. For myself—had I to decide the main issue in the case before me—I might find it necessary to reserve judgment. But one point at least requires no lengthened deliberation, and that is that Mrs. Fawcett is entitled to



our fullest meed of admiration. We hope we have not seen the last of her; we hope that we may have her with us very soon again; we will hail her advent with great joy, not merely because we are an hospitable nation, but because we believe her noble intellect does honour to her sex.

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